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THE YEAR BOOKS

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THE YEAR BOOKS

LECTURES DELIVERED IN THE UNIVERSITY
OF LONDON AT THE REQUEST OF
THE FACULTY OF LAWS

BY

WILLIAM CRADDOCK BOLLAND, M.A.

*Of Lincoln's Inn, Barrister-at-Law; late Scholar
of Magdalene College, Cambridge*

WITH AN INTRODUCTION

BY THE

RIGHT HON. SIR FREDERICK POLLOCK, BART.,
K.C., D.C.L., LL.D.

*Honorary Fellow of Trinity College, Cambridge;
late Corpus Christi Professor of Jurisprudence
in the University of Oxford*

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PREFACE

VERY few words are necessary by way of preface to this little volume. In the first place I want to thank the University of London for giving me, on the suggestion, I believe, of Mr G. H. J. Hurst—*palmarum qui meruit ferat* *v. c. c.*—the very welcome opportunity of doing something towards making those priceless storehouses of many kinds of learning, our old Year Books, more generally known than they are at present. They have been too long neglected; but it is not yet, I trust, too late to hope that interest in them may be revived, and that their unique value to many branches of scholarship may be increasingly recognized.

Here, too, I gladly find an opportunity of thanking my learned friend, Sir Frederick Pollock, for the sympathetic Introduction which he has contributed to this volume. Year Book scholarship has ever had his very active and sincere support; and in my own personal struggles in the editing of many Year Books I owe much to him.

Finally this is to be said. No one can now write or speak at length on the Year Books and their story without owing much to the earlier work of Maitland and Pike. I have made frequent specific references to them in these lectures, and here I gratefully acknowledge my general indebtedness to them for what they have taught me and for what, through their teaching, I have been enabled to learn and to say.

W. C. B.

December, 1929.

INTRODUCTION

MY learned friend Mr Bolland's lectures will, I trust, have the effect of awakening the attention of historical students both inside and outside the profession of the law to the unique interest of the documents we know as Year Books. It is about a century since English scholars began to emerge from the thick darkness which had then prevailed for a period of much the same length with regard to everything mediaeval. Our Whig ancestors of the eighteenth century, being quite sure that they lived in the most enlightened age of the world and had achieved a perfect constitution, dismissed everything that savoured of the Middle Ages (except a nominal reverence for Magna Charta) as "Gothic" or "monkish," while for that very reason obscure mediaeval abuses continued to flourish, like toadstools in a cellar, unregarded. Daylight came with the birth of the romantic school in letters and the historical school in learning. Serjeant Manning, if one is to name any one man, revived the study of "black-letter law." Blackburn, afterwards Justice of the Queen's Bench and Lord of Appeal, was moved by a somewhat hasty opinion of Manning's to discuss a Year Book case at length in a treatise of modern law which became classical. Willes, an even more learned judge than Blackburn, knew the Year Books well and was glad to impart his knowledge to younger men. All this time the books were accessible only in cumbrous, ill edited, ill

printed, ill indexed volumes. Mr Bolland has told us what has been and is being done in our own generation, and how much more remains to be done.

Endeavours have been made at various times to call attention to the bearing of these books on economic and social history. The late Mr Edward Manson published in the *Law Quarterly Review*, more than twenty-five years ago, a pretty little selection of "Scenes in Court from the Year Books¹," but rather as professional anecdotes than as contributions to knowledge of mediaeval England. Mr Bolland's extracts make a great advance on anything formerly done in this kind.

Not being of sufficient competence in the philology of mediaeval French, I will not commit myself on the question whether Anglo-French or Anglo-Norman is the better name for the language of the Year Books. Historical warrant may be vouched for either usage. The Dialogue of the Exchequer speaks of "Normanni" in contrast with "Angli," but in earlier documents the men who came over with William the Conqueror's great lords are called Frenchmen. It is certain that Mr Bolland's preference for "Anglo-Norman" has the weighty support of Prof. Paul Studer in his Oxford inaugural lecture (1920); the subject of that lecture is the literary language which flourished in England, quite independent of the law courts, down to the fourteenth century, and was not extinct in the fifteenth. At the very end of the fourteenth century French was the official language of the Cinque Ports, as one may see in the archives of Rye; but then their institutions appear to have had a specially French cast from the first².

¹ *L.Q.R.*, x. 63.

² Round, *Feudal England*, 558.

As to the authorship and purpose of the Year Books, I agree with Mr Bolland that the MSS. we have cannot well be mere private fair copies of notes taken in court. His reasons for regarding them as commercial productions are to my mind very persuasive. Exactly when the production of such books for sale became a business, and whether it was more systematic as time went on, are questions capable of solution only when the later Year Books are critically examined.

F. POLLOCK.

THE YEAR BOOKS

Lecture I

THE Year Books, our old legal Year Books, what are they? That is the question which I have set myself to answer in these lectures. It is not a question which can be answered in a couple of sentences, for these old books can be looked at from many points of view. There are, indeed, printed books already accessible from which much knowledge about them may be gathered, but these are books which, I am afraid, comparatively few people read; for, indeed, of no other branch of our national literature does the modern man or woman of literary aptitude and inclinations and of even much more than average culture know so little, and, knowing so little, care so little, as of our old Year Books. And, indeed, in stating the facts in this fashion, I am putting them, seeing what they really are, too favourably. I am afraid that it is not too much to say that the great majority of men and women who have passed through the general courses of our Universities, the elder ones as well as the younger ones, know nothing at all about them, not even the bare fact of their existence. Even the *Encyclopaedia Britannica* itself, now in its eleventh edition, knows nothing about them, has never heard of them? That is a most depressing truth. Several times it has happened to me to find that men of my own calling, and not very young men, men who, above other men, it might be fairly assumed, would

have sufficient knowledge, at any rate, to enable them to understand an allusion to the Year Books, were blankly ignorant of them. One must confess that for all but the comparative few *The Annual Register*, *Who's Who*, *Whitaker's Almanack* and the like are the only Year Books. But for those who do know them, for those who have thought it worth while to wrestle a little with their difficulties, they have a peculiar charm and allurements which you will scarcely find in anything else, for in the literature of the whole world there is nothing else like them. Lest you may think that I am speaking in the exaggerated terms of an enthusiast, let me tell you two very short stories; the one some three hundred years old, the other of last summer; the one of an English Serjeant-at-Law of the seventeenth century, the other of a young American woman of to-day; two types of our race perhaps as different the one from the other as you could find. It is on record—you will find the story in Roger North's *Lives of the Norths*—that Serjeant Maynard, who died in 1690, had such a relish of the old Year Books that he carried one in his coach to divert him in travel, and said that he chose it before any comedy. That is one story; the other is this. When Miss Bertha Putnam, the Head of Mount Holyoke College in Massachusetts, one of the leading women's colleges in the United States of America, was in London a few months ago, she told me of one of her assistants who took out with her in her boat every afternoon a volume of the Selden Society's edition of the Year Books of the Eyre of Kent of 6 and 7 Edward II, with which, Miss Putnam said, she was wholly fascinated.

The Year Books; what are they? How can I, in words few or many, best enable you to realize most sharply and

clearly what they really are? Come with me back through the centuries to a time compared with which the Revolution and the Reformation are but modern events; to a time away back beyond the Wars of the Roses, and beyond the great story of Joan of Arc, which has been revived for us all within the last week or two, to a time two hundred years and more before Chaucer wrote the *Canterbury Tales* or Gower the *Confessio Amantis*—to the early years of Edward I. Then come with me to Westminster Hall. There, sitting on a dais by the wall, are the Justices of the King's Court of Common Bench, some three, four or five of them, with the Chief Justice in the middle, in their scarlet robes, with closely fitting coifs on their heads. The clerks of the Court are doing their business at a table in front of them. On the floor of the Hall, standing here and there about the clerks' table, are the Serjeants, who alone had the right of audience in the Court of Common Bench. They, too, wear coifs, for the coif is the mark of the Serjeant's degree, and curious parti-coloured robes. Somewhere near by is a stand or box, known as the Crib, where the apprentices of the law sit or stand and listen and learn law and practice against the time when they shall be entitled to wear the coif and to plead before the Justices. Serjeants are arguing a case. There may be some half-dozen or even more of them engaged in it. They are talking one against another. The Justices are intervening now and again in the debate. Repartees, sarcasms, aptly quoted proverbs, verses from the Bible and what not are being bandied about. The most highly cultured life of the thirteenth century is finding its fullest expression there. And somewhere in that Hall, perhaps in the apprentices' Crib, perhaps elsewhere, there is a little

company of men, how few or how many I will not even attempt now to guess, who in some sort of shorthand of their own are noting down in the living language of the day the speeches and shifting arguments of the Serjeants and the matters of fact they spoke of, hot from the actual present life of the time, the jibes, the retorts, the quips, the criticisms by the Court, the judgments—whatever else that might interest them. And what these men noted and wrote down make what we call to-day the Year Books, or part of them. For not in Westminster Hall only were these mediaeval reporters ever listening and making their notes, but in Yorkshire, in Kent, in Cornwall, in every county of England, when the King's Justices went on their periodical Eyres, practised reporters went too, and wrote full stories of all the pomp and ceremony that accompanied the opening of these visitations, with many a quaint detail of the proceedings customary on such occasions, such, for example, as the searching of all the neighbouring taverns for musty or bad wine; and they tell us quite enough of the oppressive nature of a General Eyre to make it easily intelligible why the men of Cornwall in 1233 fled away into the forests at the approach of the Justices rather than abide their coming and all that it meant. Cases of every kind were triable at a General Eyre, and of reports of the trials of every kind of case the old reporters have left us a plenteous store. All this forms part of our Year Books. Then in the county towns and the larger market towns of the country Justices sat from time to time to try Assizes—the mediaeval Assize, I may just note in passing, was a very different thing from what we colloquially call Assizes to-day—and we have reports of many of these, which form another part of our old Year Books.

The next thing, perhaps, to be said, and to be said with much emphasis, is that there is nothing else in the whole world like these old Year Books of ours. "What," Maitland asked, "has the whole world to put by their side? Are they not the earliest reports, systematic reports, continuous reports of oral debate? In 1500, in 1400, in 1300 (and even before then) English lawyers were systematically reporting what of interest was said in Court. Who else in Europe was trying to do the like—to get down on paper or parchment the shifting argument, the retort, the quip, the expletive? Can we, for example, hear what was really said in the momentous councils of the Church, what was really said at Constance or Basel, as we can hear what was really said at Westminster long years before the beginning of the Conciliar age¹?" In these old Year Books of ours we can hear the actual colloquial phrases and idioms used by the cultured classes in England as they went about their daily business over 600 years ago. From no other source can we get direct information in regard to the French spoken in England in the middle age. In these respects they are absolutely unique. There is nothing like them anywhere else. "There are many mediaeval records of various kinds," Dr Holdsworth has written, "which record contemporary events. There are no other mediaeval records except the Year Books which photograph the actual words and actions and idiosyncrasies of the actors as they were bringing these events to pass....When we read the Year Books we think of a human reporter, mainly interested, it is true, in law, but, for all that, keenly alive to the exciting incidents of the trial which is proceeding before his eyes—to judicial wit and criticism and temper, to the shifts

¹ Selden Society's *Year Book Series*, 1, p. xvii.

and turns of counsel, to the skilful move or the bungling omission, even to the repartee and the exclamations which the heat of a hardly contested fight evoke¹." And what store have we set by these national treasures of ours, the like of which no other country possesses? What have we done with them? Our Universities, the Council of Legal Education, the Law Society, have hitherto ignored them; yet how shall law and the history of law be taught without them? But I hope that I shall be able to show you that there is much else than law to be learnt from them. It stands to the credit of the University of London that it has been the first of our Universities, the first of our educational bodies of any kind, so far as I know, to recognize officially the existence of the Year Books and, in allowing me the privilege of delivering these lectures, to do something towards making their existence and their paramount importance to scholarship of many kinds more generally known. "They should," said Sir Frederick Pollock and Maitland, writing of the Year Books in their *History of English Law*², "be our glory, for no other country has anything like them: they are our disgrace, for no other country would have so neglected them."

So much by way of a general and preliminary survey of the Year Books and their nature and contents as may serve as some sort of introduction to these lectures. I will now say something more in detail. And first as to the period covered by the Year Books. Chaucer, in the Prologue to the *Canterbury Tales*, says of the Serjeant of the Law that

In termes hadde he caas and domes alle,
That from the tyme of King William were falle;

¹ *History of English Law*, II, p. 460. ² Vol. I, p. xxxv (2nd ed.).

which, in modern English, means that the Serjeant had Year Books dating from the time of King William I. We cannot to-day accept that statement as trustworthy evidence of the existence of Year Books towards the end of the eleventh century. Chaucer was a poet, and we have all heard something about poetic licence. The strong opinion held by those who are entitled to form one is that there were no Year Books even down to the end of Henry III's reign. Not everyone will know even by name or reputation the book we call shortly Fitzherbert's Abridgement, or still more shortly just Fitzherbert; and so I may perhaps profitably say a word or two about it now. It is a mighty work, usually to be found bound in two generous folio volumes. It was first printed in three volumes in gothic character in 1514. Its formal title is: *La Graunde Abridgement Collect par le JUDGE tresreuerend monsieur Anthony Fitzherbert*. It consists of a series of extracts from the Year Books arranged under headings of the various subjects to which the extracts are apposite. It is quite possible, probable even, that Fitzherbert was able to use manuscripts which are not now in existence: which, certainly, are not known to be in existence. But they may quite possibly re-appear. There are probably manuscript Year Books now lying buried in private libraries, of the existence of which their present owners are unaware, or of the nature of which they are ignorant. Not very long ago a hitherto quite unknown manuscript of early Year Books was discovered in the country. Its owner had no notion what it was. So it is quite within the possibilities that the earlier Year Books of Edward I may some day come to light and to our knowledge again. On the other hand we may say with reasonable confidence that of many

manuscripts which we are studying to-day Fitzherbert knew nothing. Fitzherbert gives us what purports to be an extract from a Year Book of the fifteenth year of Henry III. It is written in true Year Book form, and gives us the names of the counsel engaged. But, unhappily, a close examination and consideration of this report shows that it does not in fact belong to Henry III's time, but to Edward III's, the letter H. in the margin of the book having been misprinted for E. There are other notes of cases in Fitzherbert attributed to Henry III's reign, but these are not written in Year Book style, and the character of the French is such as to make it certain that they were written at a later time. The earliest extracts in Fitzherbert which we can accept as genuine are of the eleventh year of Edward I. There is not the least reason to suppose that Fitzherbert had not seen an actual Year Book of that date. And it is not unreasonable to suppose that if there were Year Books of 11 Edward I, there were Year Books also of the immediately succeeding years. But these have disappeared; let us hope only temporarily. So far as we know the earliest Year Book now in existence is one of the eighteenth year of Edward I, 1289-90. From that time onwards until 27 Henry VIII, 1535, we have a fairly perfect succession of them. There are a few terms of Edward I's reign missing; and in the reigns of Henry VII and VIII there are intermissions. They stop finally, as I have just said, in 1535, when their place was taken by printed reports made by counsel who published them in their own names.

These books which come to us from the middle age are written in French, using the word somewhat loosely. It is not very good French. It is a variety of French which used to be called Norman French. We are now

taught to call it Anglo-French, though I am inclined to think that an even better name for it would be Anglo-Norman. For the language never was French; neither did it come to us from France, properly so-called. There were in the early part of the middle age four quite different dialects spoken in the northern part of what we now call France; Norman, Picard, Burgundian, and, in the Île de France, French. In the middle age a Frenchman meant a native of the Île de France, and French, the French of Paris, was the language or dialect spoken in the Île de France. These dialects, if dialects one may call them, were so widely different that a Norman looked upon French almost as upon a foreign tongue. Roger Bacon, writing towards the end of the thirteenth century, says: "That which you may quite properly say in the language of the Picards would horrify the Burgundians and even the nearer Frenchmen." The language that became the language of the Court and the cultured classes in England after the Conquest was Norman and not French. Later on, no doubt, the influence of Paris, the fact that Parisian French had become good French, standard French, affected the language spoken in England, and disturbed the development of an Anglo-Norman language which, had it been left to itself, might have pursued a more regular course. Still, the language spoken in England was originally Norman, and perhaps even our modern speech of to-day is more influenced by Norman forms than by French ones. But that is an intricate subject into which I must not enter here. Just one illustration, however, I will leave with you. Why does the Englishwoman of to-day wear a "veil" while the Frenchwoman wears a *voile*? Because "veil," spelt and pronounced as we spell and pronounce it to-day, was the Norman form and *voile*

was the Parisian form. But though these old manuscripts are written in French of a sort, yet when I read them and examine their phrases I cannot help feeling that the writers of them were Englishmen thinking their thoughts in English form, and then expressing their English concepts and sentences somewhat baldly and quite unidiomatically in foreign words.

M. Taine, who looked into these old books when he was preparing his *History of English Literature*, calls the language in which they are written "a colonial French"; *avarié*; which, I take it, properly describes a commodity damaged in transit by water, by its transference across the Channel; pronounced with the teeth clenched, with a contortion of the throat, after the fashion, not of Paris, but of Stratford-at-Bow. I do not know how M. Taine found all this out; but the obvious comment on it is that as the language spoken in England in the middle age was what one may call a local variety of Norman and not of the French of the Île de France, which was the French of the Parisians, it would have been a little surprising if our English forefathers had pronounced their words after the manner of the Parisians. It might, indeed, be very plausibly argued that of the French—to give it that name—spoken in England in the time of the Edwards there was no generally observed standard of pronunciation. It was an age of phonetic spelling. We may not be able to appraise correctly all the vowel sounds, but when we find the same words spelt in several ways at the same date by different scribes, in ways so different from each other as not to admit, so it would seem, of the same pronunciation, what other conclusion can we come to than that there was no standard of pronunciation generally observed by the cultured class of the time. Take a couple

of instances, instances of words which no one, speaking only a sentence or two, could avoid using; words which must, above other words of rarer use, have acquired a conventional pronunciation, if any words at all had acquired one. The Anglo-French or Anglo-Norman word representing our "was" is written by scribes reporting the same cases in at least as many different ways as these—*fuist, fuist, feut, feust, fut, fust*. The word which represented the old Latin *apud* with the general meaning of "with" appears in even a greater variety of forms—*o, ou, oue, of, od, oed*. All these certainly are to be found; but it seems scarcely possible that they could all have been pronounced in the same way. Take, again, the words which we spell to-day with a terminal *on*, such words as *maison*, a house. The old scribes could never really make up their minds whether the last syllable of such words should be written *on* or *oun*; though I think that there was a distinct inclination to favour *oun*. And sometimes the last syllable is written *one*. Again, one scribe will spell *père*, father, as we spell it to-day. Another will spell it *piere*; another will write *peire*. And we find the like variations of *mère* and *frère*. I could give you endless other examples of the same sort, but these will be sufficient for the present purpose. Finally, there are no accents and practically no punctuation. Perhaps I had better interpolate now the remark that the language and general details of the whole series of Year Books from Edward I to Henry VIII is far too wide a subject for me to undertake; and I must be taken as referring in these lectures only to the earlier Year Books, those of the three Edwards, when I do not make it plain that I am speaking of later ones.

Before going further I will say just a word or two

of these old books considered as mere masses of tangible and ponderable matter. They consist of pages of parchment of various sizes, folio and quarto and odd sizes for which the bibliographer has no name and can describe only in terms of inches or centimetres. We have them now bound together in miscellaneous collections, sometimes in terms running consecutively for several years, sometimes in collections of odd terms of different reigns. The volumes are scattered about the country, in the British Museum, at Cambridge and Oxford, in the libraries of the Inns of Court. There are none in the official possession of the Public Record Office. All the volumes of Year Books now known to exist can be traced back to private ownership; and this is a fact of some importance, as we shall see when we come to consider the question of their authorship. Some of the volumes are in bindings which are centuries old, possibly their original bindings; others have been bound, or rebound, in more modern, and others in quite modern times. And some have had their margins so barbarously shorn that the side-notes are too badly mutilated to be now intelligible. Here I am prompted to say that some of those to whom in modern times the work of stitching together and binding these old manuscripts was entrusted seem to have looked upon them as more or less useless lumber, whose age was their only merit and could be the only reason why anyone should want to preserve them still longer; things which no one would ever want to read or study. There is, for instance, an excellent manuscript in the British Museum, one of which I have made much use lately. But it has been somewhat recently bound or rebound, and the folios have been drawn so tightly together in the process that it is not only hopelessly

impossible to photograph them—photographs of them would be of great assistance to me—but it is a most difficult and tedious task even to read the words on each page which lie near to the stitching. To read and to transcribe concurrently is quite impossible.

Something as to the manner in which these old books are written should now be said; something as to the character of the handwriting. There were at this time two entirely different and distinct kinds of script. They are known as Court hand and cursive hand. Official documents for the most part, such as Plea Rolls, charters, and the like, such documents as were going to be filed and preserved as formal evidence of the facts they recited, were written in Court hand. Other documents were usually written in a cursive hand. The Court hand was more formal, more closely modelled upon the received pattern of the particular time—and the standard style varied with the centuries—than the cursive hand was. This, like our cursive hand to-day, varied, and varied widely, with the individual writer. The Year Books are written in cursive hand. For the most part they are written well and clearly in a script the characters of which are easily legible by anyone who has had some experience in deciphering these old manuscripts. The chief difficulty lies in the manifold abbreviations used by the writers. Some old schoolmaster who wrote a treatise in the thirteenth century, which has survived to the present day, for the instruction of his pupils in such matters laid down the rule that though you might abbreviate Latin you must not abbreviate French. You must write the words in full. Like a good many other theoretical rules, counsels of perfection, that was a rule which could not stand the strain and stress of practical

life. It would scarcely be an exaggeration to call the script of our early Year Books a mass of abbreviations. And I think that I can see signs that this abbreviation of French words was really recognized by the scribes as in its nature an illicit process, sinfully carried out by its perpetrators, in the fact that while there was a recognized code of Latin abbreviations, which a man might easily learn and understand, an authorized code which was generally recognized and followed, there was no such generally recognized and observed system of French abbreviation. Many of the stenographic forms used in the abbreviation of Latin were used, when they would serve, in the abbreviation of French. Many others were invented and used by individual scribes. And while in the system of Latin abbreviation there is a reasonable certainty as to how any particular abbreviation should be expanded, each abbreviation having a recognized meaning and one meaning only, there is no such certainty, no approximation even to any such certainty, in expanding many of the French abbreviations. The student of our old Year Books must very often guess to a certain extent how he should expand a particular abbreviation, what particular meaning he should give to it. And it is not until he has had a good deal of experience that he can feel any strong confidence in the correctness of his expansions. And even where certain stenographic symbols were, in theory, carefully distinguished, the scribes, terribly careless as many of them were, as I shall show you later on, used them incorrectly. Take a few examples. Where practically the only letter visible is a *p*, a little examination will disclose a short bar through the foot of the letter, or a tittle over it, or some other such tiny addition. If these tiny additions have been

made correctly in the French script of our Year Books and according to the rule observed in the abbreviation of Latin, then we ought to have no difficulty in distinguishing between *pas*, *par*, *pour* and *puis*; though it may be a harder matter to say whether we should write *par* or *per*; *pour*, *pur* or *por*; *puis* or *pus*. Our old scribes were lavish in their use of the indiscriminating and doubt-breeding tittle or scriggle. Many of the common law terms were never, or hardly ever, finished. The French word which means "to claim"—*demander*—naturally occurs very frequently in one form or other. Count up how many moods that verb has, how many tenses there are in each mood, and remember that there are two numbers in each tense, and three persons in each number. Every one of all those possible inflexions of *demander* can be represented by a couple of *d*'s written with a sort of terminal scriggle. And you have got to settle for yourself which particular inflexion is the one which the scribe had it in his mind to write. Similarly all the parts of the French verb which means to vouch, another law term of very frequent occurrence, may be represented by *vouch* followed by a similar scriggle. All the parts of the verb which means to warrant (*garrantir*) may be rendered by the letters *gar* and a scriggle; and the same abbreviation may mean, besides all these, both "warrantor" and "warranty." All this may seem to you quite bad enough and more than sufficiently perplexing, but there is far worse to be told you about just the single letter *r*. What may and what does *r* actually stand for at one time or another? It may stand for the substantives *reson* and *response*; it may stand for any and every part of the verbs *respondre* and *recevoir*, and for a good many parts of the verb *recouvrir*. Yes, he who would transcribe in

full the stenographic reports of the mediaeval reporters has opportunities in plenty for going astray, but some sort of reasonable certainty is acquired by experience. The reading of many reports and the comparison of two or more reports of the same case and of these with other reports of other cases of like nature make one, in the great majority of cases, fairly sure of what exactly the mediaeval reporter would have written if he had written his words at full length instead of in his more or less arbitrary and stinted stenography. But there are cases where an editor can only piously hope that he has been rightly directed. This miserly stenography had its reason, I think, not in economy of time, but in economy of parchment. Some of the abbreviations of the smaller words, with their bars or tittles, must have taken quite as much time to write as would have been taken to write them at full length; but it needed only a third of the space, and parchment was very costly in the middle age. There were few expedients which a mediaeval scribe would not adopt if thereby he could save an inch or two of writing space. We hear a good deal nowadays about Government extravagance; but was not that ever a characteristic of Government departments? At the time when these old scribes were endangering the intelligibility of their reports and laying up a store of distracting perplexities for their future editors in their desire to get every word on to a sheet of parchment that it could be made to hold, the clerks of the King's Courts were leaving long skins of the same costly material absolutely blank. I have seen mediaeval Plea Rolls containing as much blank parchment as a mediaeval reporter would have made sufficient for the whole of his reports of an average term. But the modern editor profits by this mediaeval official

extravagance. The transcription of the Latin Plea Rolls written by clerks who were supplied freely with as much parchment as they cared to have does not present nearly the same difficulties as does the transcription of the reports in the Year Books written by scribes who were everlastingly hampered and conditioned by the high cost of their materials. I must say something later in the course of these lectures about these Plea Rolls and of the light which they throw upon the Year Books, and of the light which the Year Books in turn throw upon them.

We come now to another question, a question that goes to the root of our subject. Why were the Year Books written? What was their purpose? Who was going to use them, and how? We may clear the ground a little by saying at once for what purpose they were not written, a purpose which might on first thoughts seem to be the very purpose for which they actually were written. The evidence is all against their having been written for the purpose of citation in Court, for it is only very rarely that we find anything in the nature of a precedent cited to the Court or by the Court, not more than once or twice in a term at most, and not always even so often. And on these rare occasions the precedent is not cited on the authority of any written report. It is stated as a personal reminiscence, introduced by some such phrase as "I remember," or "you will remember," or "I have seen." Case law practically did not exist in Edward II's time and thereabouts. On at least one occasion the Court said distinctly that in its rulings and judgments it was guided by the circumstances of the individual case before it and not by any precedent. In the nineteenth year of Edward III Serjeant Robert Thorpe complained that it was impossible

to know what the law was unless the Justices would follow precedents; and thereupon Justice Hillary retorted that the law (*i.e.* the common law as distinct from statute law) was the pleasure of the Justices. Chief Justice Stonore, however, seems to have thought that this was putting the matter a little too crudely. "Nay," he said, "the law is what is according to reason¹." Many years before, in 1309, Chief Justice Bereford had said exactly the same thing: "Law is based upon reason²." I do not know whether Sir Edward Coke ever read these two passages in the old Year Books—one gets the impression that his knowledge of the Year Books was confined to the extracts from them contained in the *Abridgements*—but he has said very much the same thing in his report of Harbert's case: "Judges and sages of the law have always expounded general statutes according to the rules of common law, which is built on the perfection of reason, and not according to any private and sudden conceit or opinion³." The same thought seems to permeate a rather extraordinary, perhaps I might even add amusing, definition of the law of England which was given by Justice Jerman in 1649. Addressing Lt.-Colonel J. Lilburne who stood charged before him with high treason, he said: "The law of England is the Law of God...the law of England is no written law, it is the law that hath been maintained by our Ancestors, by the tryed rules of Reason, and the prime Lawes of Nature; for it does not depend upon statutes or written and declared words or lines; and this is our Lawes that have been maintained by our Ancestors, and is subordinated to the law and

¹ Rolls Series of *Year Books*, 18-19 Edw. III, p. 378.

² Selden Society's *Year Book Series*, III, p. 80.

³ 3 Reports, 13 b.

Wil of God, therefore I say again, the Law of England is pure Primitive Reason, uncorrupted and unpolluted by humane humours, or humane corruptions, Wits or Wils; that's the Law of England¹."

If the Year Books, then, were not reports for citation in Court somewhat after the manner of the more modern Law Reports, what were they? Maitland was at first inclined to believe that they were, the earliest of them, at any rate, something of the nature of student's note-books; note-books in which the students, learning their business in Court, in the Crib, jotted down what struck them individually as being of importance or of interest, as material for subsequent discussion amongst themselves. I do not know that Maitland ever definitely formulated any other theory, but I think that before he was, to the irreparable loss of legal scholarship in general and Year Book scholarship in particular, taken from us, he was disposed to revise this early opinion in the light of his increased knowledge and fuller consideration. This early view of Maitland's was far, very far, from the view which Mr Pike, the very learned editor of the Rolls Series of the Year Books of Edward III, took of them. Whatever else they might be, they were certainly not, in his opinion, student's note-books. But he, too, died, before he had, I think, pronounced his final word on the question.

In another place Maitland wrote that the object of the report—the report of the Year Books—was, from the very first, "science, jurisprudence, the advancement of learning"; and these are not quite the terms in which one would generally speak of a law-student's note-book. Here, I have little doubt—I hope that I may presume to

¹ *The Trial of Lt.-Colonel J. Lilburne* (1649), p. 23.

say so much.—Maitland's more mature opinion found expression. How can I in a few words best lead you to understand exactly what he meant. Pleading in the King's Courts of the middle age was entirely different in nature and manner from the pleading in the King's Courts to-day. It is now a matter of precision and precedent, speaking generally, settled in writing before the parties come into Court. Then it had something of the nature of a game of chess between experts, after they came into Court. You never quite knew what shape the attack would take; you never knew what shape the defence would take; or how unexpectedly either would be cleverly and suddenly varied to meet a variation on the other side. Not even the Serjeants themselves who were fighting the cases in Court knew upon what pleas they would finally have to rely. It was even all more doubtful in its own way than a game of chess, for in playing chess you do, at any rate, know what moves are permissible and what are not, but in the mediaeval Courts counsel did not know what pleas the official umpires, the Justices, would allow and what they would not allow. It was not much use citing precedents. And so they came into Court rather uncertain as to the line that would be best for them to take, very uncertain what line the manoeuvring of the other side would force them to take, and what line the Court would allow them to take. Some cleverly conceived technical objection by counsel on the other side, if the Court could be persuaded to look favourably upon it, would throw the whole preconceived plan of action out of gear. It was necessary to be able to decide, all at a moment's notice, what was then, in the circumstances, the best alternative line to take up. Further, a plea when it was once formally

made by counsel and accepted by the Court was binding upon the party making it. It could neither be withdrawn or modified. It was well, then, to find out, if you could, what a Court which cared little or nothing about precedent and adapted its law to circumstances thought about it; whether the Justices were likely to give judgment on it in your favour or against you. If a Serjeant's first move, warily made, did not seem to enlist the Court's sympathy on his behalf, he would vary it. He would, as warily, try some other way to success, never finally tying himself to any definite plea until he thought he had lighted on some form which would bring him success or had exhausted every form and variation of which he could think. It is obvious that a book which told him of all the various forms of pleas which Serjeants had made in cases like his own, of the successful objections which other Serjeants had made to them—for the unsuccessful argument is reported as well as the successful—of the views which the Justices had taken of this plea or that, of the reasons why they had approved or disapproved of it, would, if he had it at his fingers' end, if much study of it had made him completely familiar with all that was to be learnt from it, be invaluable to him. Such a book would most certainly be for him a practical, a very practical, text-book of science and jurisprudence. It would be, without question, a book which made for the advancement of his learning.

Who wrote the Year Books? Of all the questions which can be asked in connexion with the Year Books this is, perhaps, the hardest to answer. It has been the subject of much discussion and no really certain answer has yet been found. It cannot be dealt with in a few words, and I will reserve what I have to say about it until a future lecture.

The present utility of these old Year Books and the urgent necessity for their presentation in a form in which they can be available for the use and study of students of most branches of learning—what of these? To discuss the utility, the necessity of them to lawyers and to students of legal history would be an obvious futility. Such utility, such necessity are too transparently obvious. It will be sufficient, more than sufficient, for no laboured argument can be needed, to quote some words of Lord Chancellor Bacon's, words which would probably have been very much stronger if he had known as much of the contents of the Year Books as he might have done, and I am sure would have done, if he had been living now. "For," said he, "the Common Law of England, it appeareth, is no text law, but the substance of it consisteth in the series and succession of Judicial Acts from time to time which have been set out in the books which we term Year Books." There, from the lawyer's point of view, from the legal historian's point of view, you have the whole matter set clearly out. The Year Books are the foundation of the common law of England; that is, I may explain for the information of those who may not quite grasp the meaning of the term, the prescriptive and immemorial law of the land as distinguished from the law made by Act of Parliament. Though that common law is now well and firmly established, there was a time, long centuries ago, when it was not so established; a time when it was being slowly and gradually forged. The Year Books take us back to that long succession of far off years and show us how those principles of law which are now so thoroughly recognized and established were once matters of doubt and contest, and after what struggles and difficulties and uncertainties they were at last

generally accepted. In their *History of English Law*¹ Sir Frederick Pollock and Maitland declared that "the first and indispensable preliminary to a better legal history than we have of the later middle age is a new, a complete, a tolerable edition of the Year Books." "If to the whole mass of materials for the history of law England had nothing to contribute but these Year Books, England's contribution would still be of inestimable value²."

But not to the legal historian alone are these old books absolutely necessary for the full understanding of his subject. They are equally necessary to the historian of each and every side of mediaeval English life. There is, indeed, nothing or practically nothing about battles and statecraft in them, but if you search them and ask them intelligently you will find in them answers to most questions touching the history and condition of the people. In the long panorama of mediaeval life which they unfold we have pictures of all classes of society, of the lives they lived, the circumstances in which they lived them; of the deeds they did, of their relations with their neighbours, with their dependants, with their equals, with those superior to them in wealth and social position. The villein or serf, the poor freedman, the well-to-do tenant of land, the serjeant-at-law, the attorney, the bailiff, the parson and the vicar, the great lord of many manors, with his rights of wardship and marriage, the Earl, the Bishop, the Prior and the mitred Abbot, all these pass before us, distinct and living, as we turn over the pages of our old Year Books; and we see, as we can see nowhere else, see it as related by themselves and as

¹ Vol. I, p. xxxv (2nd ed.).

² Maitland in the Selden Society's *Year Book Series*, I, p. xvii.

recorded from their own lips by their contemporaries, the life which men of all classes in England lived six centuries and more ago. "It will some day," Maitland wrote, "seem a wonderful thing that men once thought that they could write the history of mediaeval England without using the Year Books.... These Year Books come to us from life. Some day they will return to life once more at the touch of some great historian."

The old Year Books are equally necessary to the historian of our language, for they are reports of what real living men, relating and discussing the actual facts of contemporary life in their own natural words, actually said. They tell us exactly how French was spoken in every-day life in England six hundred years ago. In them we have no speeches savouring of unreality, couched in the more or less artificial style of the study or the stage, such as are put by poets or dramatists into the mouths of feigned characters. The language of the Year Books has been untouched by any editing. The words remain to us as they were spoken. They come to us straight from life, true to life, true to sound.

For the philologist the old Year Books are sources of information of a quite unique nature; but they remain practically unknown, and, because unknown, unused. When the attention of the late Professor Skeat was attracted to them he declared that he found in them a rich mine of philological lore. He had been reading some of the volumes of the Year Books of Edward II published by the Selden Society, and in what must have been one of the last letters he ever wrote he told me that he found them highly important from a philological point of view. He told me with lively enthusiasm of what he called startling and important facts which he had already dis-

covered from reading them and had noted for future use. But he was unhappily lost to scholarship before time had been allowed him to study the language of these old books with the careful fulness with which he was hoping and intending to study it. I had sent him a long list of the appellations and trade-names of traders of all sorts in England in the early years of Edward II, gathered from the Year Books, in which he was greatly interested and on which he sent me back some valuable comments. But, he added, "the most extraordinary thing is that your examples of these words are often a great deal earlier and older than those in the *N.E.D.*, which requires much explanation." I had that explanation some time later from Dr Bradley, the present editor in chief of the *Dictionary*, to whom I had sent some notes. "I don't think," he wrote, "that anybody has searched the Year Books."

Lecture II

LAST week I tried to explain to you in some degree what our old Year Books really are. I said that they are reports of cases heard in the early English Courts made by men who were actually present, reports of the words actually spoken, reports of incidents which actually happened made by men who were present when they happened; reports made in the living language of the time; and I added that these reports were probably put together not for the subsequent citation of them in Court as precedents, but for the instruction of the Serjeants in the complicated moves of the intricate game—so to speak—which they had to play; to show them what, when one move failed, was the next best one to make in the circumstances. I told you of the period of time they covered, and said something of the language in which they are written; of the forms and complexities of the script used by the reporters and scribes. I told you that they were absolutely unique; that there was nothing else in the whole world like them; and I tried to show you how necessary a knowledge of them was, not only to the lawyer and to the legal historian, but to the historian of each and every side of English mediaeval life, and not even to these only, but also to the historian of our language and to the serious student of philology.

I want to say something to you this afternoon upon what is, I suppose, the most difficult question in connexion with the Year Books, the question of their authorship. Who wrote them? But it may be helpful

if I first say something about the Plea Rolls, which are as necessary for a full understanding of the Year Books as the Year Books are necessary for the full understanding of the Plea Rolls. First as to the form of these rolls. They are engrossed in court hand on both sides of membranes of parchment about a yard long and nine or ten inches wide. The language in which they are written is Latin. In the course of a legal term—there were four terms in the legal year—a varying number of these membranes would be filled according to the number and length of the cases before the Court. In some of the terms in Edward II's reign, for instance, four hundred membranes or more were used. These were stitched together at the top end, and form, in the bulkier rolls, a very great mass of matter. How many copies of each of these rolls were made is not quite certain. We know that certainly two copies of each roll were made, one inscribed with the name of the Chief Justice for the time being and known as the Chief Justice's Roll; the other inscribed "Rex," and known as the King's Roll. There were possibly other copies made; possibly one for each of the Justices; but as to this I cannot as yet say anything certainly. Now, what was the purpose of these rolls? What was written in them? We generally speak of the contents of these rolls as the record, and when I use that term henceforward I shall mean that which is written on the membranes of parchment forming the Plea Rolls. The record was drawn up for the purpose of preserving an exact account of the proceedings in the various cases which came before the Court. It tells us the names of the parties to an action, the nature of the action, the plaintiff's statement of his case, the defendant's defence, and the pleas upon which both parties finally rested their case, the issue left to a jury, if an issue were

left to one, the verdict of that jury if one were ever delivered, and the judgment of the Court upon that verdict. The object of the record being finality, a clear and permanent statement, that could not at any future time be controverted, that bound everybody, that prevented the particular issues raised in a particular case ever having to be argued again, there was no need to burden it with pleas and arguments which were, later in the hearing of the case, abandoned by the parties or disallowed by the Court. These had nothing to do with the purpose for which the record was compiled. The record, therefore, ignored them. The reports as we have them in the Year Books were drawn up for an entirely different purpose. They were intended, not to show what had actually been determined with regard to certain special facts in litigation between *A* and *B*, a matter which it was highly desirable should be authoritatively recorded somewhere that there might be an end to all possible litigation in the future in respect of the same set of facts; it was not for any purpose of this kind that the reports were compiled. The record, one may say, was compiled for the information of the general public, for the advantage of the people at large; the report was intended for the use and instruction of the legal profession. It was designed to show the general principles of law, pleading and practice. The report was, of course, always a report of a particular case, a case which had been actually heard and tried, but it was a report of a case which the reporter had reported solely because it contained or was supposed to contain matter or principles of general use and application. The Roll contained a record of every case and matter which came before the Court, even though there were not the smallest legal

interest or importance in it. The record is very careful to give us the names of the parties and of the places concerned. In the report these names of parties and places are very frequently omitted altogether or represented by letters chosen capriciously or even by names obviously invented by the reporter on the spur of the moment. These were not facts which the lawyer, as such, was interested in knowing. They could teach him nothing professionally; they could be of no sort of assistance to him, no guide to him, in formulating his pleas in some other action in which he might in time to come be engaged. The Plea Rolls were made by the officials of the Court. They had official authority, and they were retained and kept in official custody.

Now it will be clear from what I have just said that the record in Latin will naturally very often differ widely from the report in French; each containing matter which is absent from the other; each serving to illustrate the other, and, for historical purposes, neither being complete without the other. The report tells us what passed between the Judges and the Serjeants and the parties or their attornies in the actual words spoken in Court, tells us of many things which, because in the end they had no bearing upon the issue ultimately left for decision, never found their way into the record. In the reports, too, we come across innumerable matters of interest, legal, historical, constitutional and social, about which the record is entirely silent. Yet the record, in its own calmer and more prosaic fashion, discloses many details which supplement what we are told in the report; details without which we could not draw a perfect picture of the social condition of the country in the middle age. To put it shortly, the reports are the living body, acting and

speaking and thinking and wrangling and changing its mind on the pressure of the moment; the record is the skeleton, the dry bones of the bare facts.

Before I come to close quarters with the question of the authorship of the Year Books it will be convenient now to make yet another short digression which may help you to a clearer understanding of the matter generally later on. Several manuscripts dealing with the cases heard in each several term of the legal year in the period covered by the Year Books have come down to us. I mean that we have several sets of reports for each term, or, at any rate, for most of them. Of these several sets for any particular term, two, three, four, or even more in some cases, are all obviously derived ultimately from one and the same original report. While each of them varies from each of the others of the same group to a varying extent, there is such a general similarity amongst them all as can only be accounted for by attributing them all to one ultimate common origin. Then there may be another group of reports of the same term which are widely different from the first group. But they, in turn, so strongly resemble each other that we are sure that they, too, must all be derived from one common ancestor, an original report made quite independently of the original report from which the first group of reports was derived. There may be one, two or more other similarly independent groups of reports. One group will perhaps give us, instead of the usual report in French, an extract from the Latin record; it will give us cases which another group of reports omits altogether; it will omit reports which other groups will give. Where two or more of these groups of manuscripts report the same cases they will report them in quite different ways. When they report

the same facts and arguments they will report them in quite different fashion; set them out on a quite different plan. But, when dealing with the same cases, they will not always report the same facts or the same arguments. What struck one reporter as being more important appeared to another as less so; and each reporter reported what he thought most worthy of being reported. Sometimes we get a report which seems to be compounded of the reports contained in two different groups. The earlier part of the report will follow the general lines of one group; the latter part will follow the general lines of another group; or the report will be continued, so far as one knows, on what one may call original lines, on lines, at any rate, which differ from those of any other report of the case now known to us.

Having dealt with these preliminaries we may now consider the question of the authorship of the Year Books. Who wrote them? In the first place, had they, like the Plea Rolls, an official origin? It will be well to get that matter settled, if we can, before we go further. From the seventeenth century up to a comparatively recent time it was very generally believed and very dogmatically asserted that they had an official origin. Coke, Bacon and Blackstone, great names, and authorities as weighty as any, all believed and asserted this. They do not seem to have entertained the least doubt about it. How came they by this belief? On what known facts was it founded? It seems certain that this generally accepted theory of the official origin of the Year Books rested ultimately upon some words written by Plowden in the Preface to his *Commentaries* or *Reports* first published in 1571. So much has been built upon these words that I will quote them as they there stand. "In former times,"

Plowden wrote, "as I have heard on good authority, there were four reporters of our law cases, who were men selected for the purpose, and who had an annual stipend for their labours in the matter paid by the King of this Kingdom, and they conferred together in drawing up and producing a report. And their report, by reason of the number of the reporters and their approved learning, carries great authority, as it rightly deserves¹." Thus Plowden in 1571. Blackstone² embroiders and adds to Plowden's original statement without any authority at all, and tells us that these reports were taken by the protonotaries or chief scribes of the Court at the expense of the Crown, and published annually, whence, he adds, they are known under the denomination of the Year Books. That is a statement for which there is no authority to be found anywhere. It is obviously founded on Plowden's words, but it goes beyond them in the invention of the protonotaries, and the statement that these reports were published annually, and were therefore called Year Books. As a matter of fact they were not called Year Books till a time long after the fourteenth century. No mediaeval Serjeant ever cited a Year Book by that name. For him they were simply "the books." Now let me tell you what Sir Edward Coke says. "It doth evidently appear that the Kings of this realm did select and appoint four discreet and learned professors of law to report the judgments and opinions

¹ Plowden's own French text is: En auncient temps (sicome iay sur credite oye) ilz y auoient quater Reporters del nostre cases del ley, queux fueront homes eslieu, et auoyent vn annuall stipend pur leur tramayl en ces, pay par le roy de cest Realme, et ils conferront ensemble al fesance et produiment de le report. Et lour report, pur le number de les reporters et lour approbate scauoire port graund credite, come il de droit merite.

² *Commentaries*, I, p. 71.

of the reverend Judges¹." This is evidently only an echo of Plowden's original statement, and Coke produces no tittle of evidence or authority in support of what he says. Bacon makes no specific statement on the matter. He merely adopts the theory as an argument for a system of official reporting.

I cannot within the limits of this lecture even epitomize all that has been written from time to time by competent scholars in criticism of the statement by Plowden which I have quoted. I will note two facts only touching the words as they actually stand. (1) Plowden's statement confessedly rested upon vague hearsay only. (2) It is not certain that it referred to the Year Books at all. It probably did not, for it is not at all applicable to the reports contained in them. Perhaps the strongest reason why I should not spend much time now in discussing it here is the fact that Plowden's theory of the authorship of the Year Books is to-day wholly discredited by all competent scholars. It will be sufficient here and now to quote Sir Frederick Pollock's considered opinion. "I hold," he has written, "that the legend of the Year Books having had an official or even a semi-official character (which I tried to find credible so long as I could) is now finally exploded²." Thus Sir Frederick Pollock denies the Year Books not only an official character, but even a semi-official one. This brings us to Mr Pike; and any opinion which Mr Pike expressed touching any question relating to the Year Books must be considered with great respect. Now, while Mr Pike was strong in his disbelief of the Year Books having any official character, he was somewhat inclined to believe

¹ Preface to 3 Reps.

² *Law Quarterly Review*, xxix, p. 211.

that they might have had what we may call a semi-official origin. He was unwilling to believe that Plowden's statement, endorsed by Bacon and Coke and Blackstone, was without some sort of warrant, was nothing but a vain invention without any historical foundation, and so he thought it not improbable that though the Year Books had no official authority they may have come from an official source. In other words, he suggested that these old reports were originally written by an officer of the Court for his own use or for the use of others. I think that this belief of Mr Pike's, if, indeed, I am justified in calling it an actual belief, was based chiefly on the fact that we not infrequently find in our French Year Books—Year Books written mainly in French, I mean—extracts from the official Plea Rolls, which extracts could not be made, one supposes, without the knowledge and consent of the clerk or officer who had the custody of these rolls. They were not open to general inspection. They were not even open to the inspection of the Serjeants. Serjeant Toudeby¹, for instance, early in Edward II's reign was very anxious to know on what exact ground some land had been recovered by judgment of the Court a little while before. The knowledge was necessary for the proper presentment of the case he was arguing. If he had been allowed to inspect the roll he certainly would have inspected it; but all that he could do was to try to persuade the Court in a roundabout way, not disclosing his real purpose, to order the roll to be searched. But the Court quite saw through the Serjeant's scheme, refused inspection of the rolls and told him to get on with his case. Faced by, and fully recognizing, the fact that all the manuscript Year Books which have

¹ Selden Society's *Year Book Series*, I, p. 103.

descended to us have been found in circumstances which indicate that they were originally in private hands, and granting as beyond question that, whatever their authorship, they had no official recognition as part of the property of any Court, Mr Pike¹ has argued very learnedly in support of this semi-official origin of the Year Books; but scarcely, I think, with complete conviction. He suggests no adequate reason why the custodians of the rolls should have been at the trouble and expense of writing these reports. He makes no suggestion that they were paid for the work. And why should they have done it for nothing? I have not time here to review all Mr Pike's arguments in support of this theory of the semi-official authorship of the Year Books, though they should certainly be read and considered by all who would qualify themselves for forming an opinion of their own upon a very difficult and knotty problem.

But if we cannot quite see our way to look upon these old books as merely student's note-books nor to allow them any official or even semi-official character, there is yet a third theory possible; that they were the work of professional reporters, that is, of reporters who made it at any rate part of the business of their lives to report cases heard in the Courts, making those reports not in any way as officers of the Court, nor for the purposes of the Court, but merely as men supplying for a price an article for which there was a sufficient demand to make the regular production of it sufficiently lucrative. No one, I suppose, who has spent a good many years of his life, as I have done, in studying and editing Year Books, can very well avoid forming some theory as to their origin and authorship and the purposes for which they

¹ In his last volume in the *Rolls Series of Year Books*.

were written, there being no generally received and credited theory already in existence for his acceptance. My own theory about them is something like this. I give it to you for what it is worth, merely premising, as perhaps I may be permitted to do, that it has now been before the world for some years, and, so far as I know, has been generally accepted as a reasonable and probable one. I have set it out at some length, together with my reasons for disagreeing with Mr Pike, in the Introduction to the second volume of the *Eyre of Kent of 6 and 7 Edward II*, edited by me for the Selden Society.

The question of the origin of the Year Books is really a double question: the question of the origin of the original Year Books, the original reports in the handwriting of the men who actually made the reports; and the question of the origin of the Year Books as we have them now. I remember Mr Pike telling me once that he had never seen an original Year Book, meaning by that term a book that had not almost certainly been copied, with mistakes and omissions of various sorts, from some earlier book or collection of reports. I do not think that anyone living within a time to which I will not attempt to put a limit has seen such a book. Was there ever, in truth, anything that could have been called an original Year Book? I suppose that there were in the days when the early Year Books were put together, as there have been ever since, men at the bar, apprentices of the law as they were then called, there may even have been Serjeants amongst them, who found it difficult or impossible to make a sufficient living from the practice of their calling. Then, as now, books of precedents, of suggestions as to the various forms of pleas of which parties to an action might avail themselves in the varying

circumstances of particular cases, books of general information as to procedure, interspersed here and there with such miscellaneous details as might be useful to the practitioner and the student, were wanted; and, being wanted, would, if they could be got, fetch their price. But, if wanted at all, they would probably be wanted in considerable numbers. The mere writing of the words contained in a single book—for you will remember we are speaking of days a long time before the art of printing was invented—meant the consumption of much time and involved much continuous work; and more Year Books were probably wanted than could be produced by the unsupplemented labour of the few expert note-takers—for I suppose that the number of men in any particular court competent to take the necessary notes could not, in mediaeval times, have been a large one; and these books were also wanted at a smaller price than that at which they could have been sold if they had been produced by the single-handed work of these few competent reporters. Some mediaeval capitalists, possibly a syndicate of Serjeants, for the Serjeants needed these reports as much as other men, needed them, perhaps, more, see their way to a profitable investment of capital. They will engage two or three of the juniors of the Court to take notes, to jot down on odd scraps of parchment just such facts, just such fragments of dialogue as will make it plain why the Serjeants engaged in the case thought it worth while to venture upon the suggestion of this or that plea, trying to discover with what favour or disfavour the Justices regarded it, before committing themselves irrevocably to it; noting what pleas were in the end successful or unsuccessful and why; noting, in fact, all those points of law and procedure a knowledge of which

would usefully form part of the equipment of counsel arguing similar cases; noting, too, such matters of general interest, outside the strictly legal interest, as had a personal appeal for them. These juniors, being constantly in Court, would naturally be upon terms of at any rate friendly acquaintanceship with the clerks of the Court who made the entries in the Plea Rolls, and might quite probably be given opportunities now and again of making extracts from the roll; and the roll records, as I have told you, the issues of fact as they were finally left to a jury or the point of law that was left for the decision of the Court. If the reporting junior has neglected to take a note during the actual hearing of a case which he subsequently discovers he ought to have reported, there is a possibility, if he is in the good graces of the enrolling clerk, that he may be allowed to supply the deficiency to some extent from the roll. If it were the clerks themselves who put the Year Books together, as Mr Pike suggested, it is difficult to understand why, using the roll at all, they used it so sparingly as it is used; and why, considering the very sparing use made of it, and comparing an extract from it in one Year Book with a report in another in the usual Anglo-Norman dealing with the same case, an individual clerk used it just when he did. When it was used at all, it was used not as supplementary to a report, but as a substitute for one. On the other hand if it were the juniors who made the notes for the original Year Books, then we can easily understand this sparing use of the record to which they could have access only surreptitiously, when the opportunity presented itself, or by the grace of the clerk, who had no right to grant it and had to be very careful how he did grant it. Let me work out

my hypothesis a little further. When the reporting juniors, students or apprentices, have completed their tale of work for the day, the scraps of parchment upon which their notes have been written will be collected by agents of the syndicate or capitalists, or will be got into their hands somehow, and carried off to the *scriptoria* or writing rooms of their principals, which were, may be, in some monastery or, more probably, in some mediaeval Grub Street. That *scriptoria* in which scribes wrote in Anglo-Norman did in fact exist in the thirteenth and fourteenth centuries, the survival of treatises written then for the instruction of such scribes is positive proof. In these *scriptoria* will be gathered men who can write with reasonable rapidity and legibility, but whom the testimony of their work prevents us from crediting with much more than this. There will be brought to each *scriptorium* probably only one reporter's note of such cases as it has been thought worth while to report. Someone will read this note aloud. The scribes will follow the spoken words as accurately as they can without taking too much trouble, but they will not follow them quite accurately. They will mistake one word for another that has a somewhat like sound, but a quite unlike meaning, and they write the wrong word, it being no business of theirs to trouble themselves with the meaning. Others, drowsy, perhaps, in the close atmosphere of a hot and unventilated *scriptorium* on a summer afternoon, have not been able to make their pens keep pace with the reader's tongue, and have to write a good deal of what they eventually do write from memories so flurried with anxiety lest they should fall too hopelessly behind the reader that often it is but muddled copy that they turn out, faulty both in its omissions and repetitions as well

as in its actual perversions of fact, and couched in a style and in an orthography which vary with the skill and intelligence of the individual scribe. And so from inaccuracy of hearing, from carelessness, from inability or neglect to follow the reader with the closeness necessary for accurate reproduction, we get a series of first variants from the same set of original notes. Our mediaeval capitalist or publisher—call him what you will—thus obtains in process of time several copies of a Year Book of a particular term—as many copies as he employs scribes. For the production of still more copies other means are now available. He can give his completed Year Books to his scribes to copy. These will, the best of them, really copy them, mistakes and all. But some of the scribes will be very careless. They will, indeed, be very careful not to amend mistakes already made, but they will certainly add to their number. They will copy down some word, and then, raising their eyes again to their book, they will catch sight of a second occurrence of the same word lower down in their text and will mechanically continue their copy from that second occurrence, leaving out all that intervenes, be it much or little; and sometimes the omission amounts to several lines. If what is omitted can be supplied from another manuscript, we suffer no great harm; but it cannot always be so supplied. Sometimes these omissions are made in circumstances which make them more serious and bewildering than mere omissions, pure and simple. The omitted text will include the latter part of a speech by counsel on one side and the first part of a speech by counsel on the other side, with the sort of result that may be imagined—a speech wherein the speaker seems to use arguments merely for the purpose of showing a minute or two later how rotten

they are; of stating facts merely for the purpose of contradicting them. Lapses of this kind are distracting to the reader until he has grasped what has really happened. So we get a second series of variants, all, with the first series, lineally descended from a single original report. And so the process went on, each series varying more widely than its predecessors from the original. The copies so made were evidently put upon the market just as they were first written, mistakes, omissions, repetitions and all. Clearly no scribe ever thought of reading over what he had written. If he had done so, not even the stupidest of them, one thinks, could fail to see the nonsense he had made of his work here and there, and, seeing that, would not have done something in the way of correction. But there was obviously no thought of revision. Business, then as now, was business. Then as now it was *caveat emptor*—the book was sold at the buyer's risk—the capitalist was anxious for his profit; the practitioner and the student must correct the books for themselves. Much, of course, that perplexes a modern reader of the Year Books offered little or no difficulty to the contemporary student. He could mentally amend the lapses of the hireling scribe with far less difficulty and with much greater confidence and certainty than we of to-day can amend them. If there were sentences here and there out of which even he could extract no intelligible meaning, these were possibly and probably sentences of which the exact meaning did not very much matter to him. There are comparatively few attempts at correction in the manuscript Year Books that have come down to us, correction, I mean, by those who had bought and used them; and the probable explanation of this is that, in spite of all their mistakes of one kind and another, the

contemporary student could get from the reports as they stood all that he really needed, and it was not worth his while trying to correct what was really immaterial.

Such, briefly, are the opinions which up to the present I have formed on this question of the authorship of our old Year Books. It is a subject upon which I could easily dwell much longer, but I have still several other matters to speak of, and this must suffice for the present. When more of these old manuscripts have been critically examined and considered, it is quite possible that some clearer and more certain clue to their authorship may be discovered than has yet been found in the comparatively few which modern scholarship has so far been able adequately to study; and the serious study of the Year Books dates from not very many years back. There are many, very many, of these old manuscripts which have yet their secrets to disclose to him or to her who will go in all seriousness and seek to discover them. Some day, perhaps, there will be classes in our schools and universities for the regular study of the Year Books and kindred subjects. But that day is not yet, nor can it be, at all generally, I fear, for many days to come, for you must first train your teachers, and no provision has anywhere been made or even considered for training these. When you have the teachers ready, perhaps pupils enough to make it worth while may follow. At present I know that he has a hard task before him—no one knows it better than I do—who would teach himself, without any help or guidance from others, enough to enable him to study a manuscript Year Book with any ease or pleasure to himself or to the profit of general scholarship.

I said just now that there was probably a large enough demand for manuscript copies of the Year Books to make

the systematic production of them on commercial lines a profitable undertaking. This belief seems to get substantial confirmation from the fact that only seven or eight years after the introduction of printing into England our English printers began to print and publish volumes of the Year Books¹. William de Machlinia was the first of our printers to take them in hand. He began with some of the later years of Henry VI, from the 33rd to the 37th. Why he should have selected these particular years of this particular reign is not known; but it may be noted that they were almost contemporaneous reports, having been originally made not much more than twenty years before their publication by Machlinia. The date of their publication does not actually appear on them, but it is supposed, on good grounds, to be 1481 or 1482. Caxton does not seem to have printed any Year Books; and it remains uncertain whether Wynkyn de Worde in his long business career ever printed any, though two volumes of the seventeenth and eighteenth years of Edward III have been attributed either to him or to John Rastell, on account of certain peculiarities in the type used in printing these volumes. Richard Pynson was the first systematic publisher of Year Books. His earliest dated edition is 3 Henry VI, October 12, 1510, but four of his undated pieces have been assigned by experts to the last ten years of the fifteenth century. Fifty editions surely, and perhaps five more, bear his name. In 1553 the greatest of all the Year Book publishers, Richard Tottell, entered the field, and for thirty-eight years occupied it so completely and fully as to

¹ I owe much in this connexion to Mr C. C. Soule's very complete article on *Year Book Bibliography* in *The Harvard Law Review*, XIV, p. 557.

leave no room for any rival. There are about 225 known editions of separate years or of groups of years which bear his imprint or can be certainly attributed to his press. He is pre-eminently *the* publisher of Year Books and he turned out so many editions and so lowered their price that he evidently succeeded in making them a popular and profitable literature. Some other publishers had also by this time dabbled in the business of Year Book publication, but to such a small extent that in this general survey I need not trouble you with their names and the details of what little they did. Up to the date which I have now reached no Year Book reports of the reigns of Edward I, Edward II or Richard II had been printed. Probably the reason why nothing of Richard II had been printed was that no printer had been able to lay his hand on any manuscript reports of that reign; but in 1584 Richard Bellewe, a barrister of Lincoln's Inn, edited and published a small volume measuring only six inches by four and containing 326 pages in which he brought together the notes of cases heard in Richard II's time which were scattered through the *Abridgements* published by Statham originally in 1495, by Fitzherbert originally in 1514 and by Broke in 1568. We still remain without any serious attempt to print the Year Books of this reign, though sufficient manuscripts are now available. In 1678 an association of printers produced an edition of the Year Books of the whole of the reign of Edward II together with the *Memoranda* of cases heard in the Exchequer during the first twenty-nine years of Edward I; but these latter cannot be properly reckoned amongst Year Books. After issuing this volume the same printers proceeded to reprint the then out-of-print volumes of the earlier editions, issuing nine volumes in 1679 and

one in 1680. These eleven volumes form what are now looked upon as the standard black letter edition of the Year Books, and are generally known as the Vulgate, a name which, I believe, Maitland first bestowed upon them. With the publication of this edition the curtain fell upon the printing of Year Books and was not lifted again for nearly two hundred years.

What, shortly, am I to say about these old printed editions? In the first place I ought to say that I do not suppose that anyone has really read in any seriously critical sort of fashion the whole of them. No one who is competent to do so has had the time to give to such an unprofitable piece of work. "To read straight through the Year Books in their present condition," Sir Frederick Pollock wrote many years ago¹, "is a task that no man living can be expected to undertake." Of many of these old printed volumes one has only a superficial knowledge; but, on the other hand, many of them, the earlier ones especially, have been read, and read and studied very carefully. And what is the considered judgment passed upon them by those whose full competence to judge them is acknowledged? "Those who have attempted to read them," Maitland wrote, "will know how bad, how incorrigibly bad they are"; and he referred to them again as "that hopeless mass of corruption that passes as a text of the Year Books." No one who knows anything much about them will think that Maitland was in the least degree exaggerating in so speaking of them. The original manuscripts, one knows, are corrupt enough, are full enough of bewildering omissions and blundering perversions and distracting mistakes of all kinds; but

¹ In the Introduction to the third edition of his *Principles of Contract*.

what these old printers found quite bad and more than bad enough they have left still worse. The men employed by the publishers to transcribe the manuscripts for the printers' use were obviously unequal to their task. Quite possibly the publishers would not pay the wages which really competent men wanted. Anyway the men they did employ were certainly not competent. They could not even read with certainty the original manuscripts. When the original manuscript was correct enough and spoke quite intelligible sense they miscopied it, from inability to read it, and turned the report into absolute nonsense. They then did not know how to expand many of the abbreviations used by the original scribes—and a transcriber who cannot correctly expand the abbreviations, of which the manuscripts so largely consist, is sure to make a horrible mess of the work. The men who set up the type, the compositors, were in all probability and seeming not qualified to do this special kind of work; and their bungling added generously to the mass of mistakes in the copy in front of them. There was certainly, one may confidently assert, no attempt at proof-reading, no revision of any sort. Just what the compositors first set up was printed and sent out into the world with all the sins of the transcribers and printers upon its head. Perhaps, indeed, the first question a critical modern reader of these sixteenth and seventeenth century printed editions of the Year Books is prompted to put to himself is this: What use could these books ever have been to anyone? Why should anyone ever have paid for them the prices which they actually did pay for them? Yet there can be no doubt that these volumes were bought in large numbers, and that many lawyers and students found it worth their while to buy them and to

go on buying them. Why? What is the explanation? I think it is this. The men who bought and read these old printed editions were men who were steeped to the finger tips in the lore of the old law and the old practice and procedure. They knew, where it is hard for us even to guess in halting fashion, what the book ought to say; what, therefore, it must be taken to say. They could, consequently, afford to put up with very slipshod texts. Even if they could not suggest exactly the right form of that which the printers had given them in a sadly distorted form, they could with reasonable certainty—with a certainty sufficient, at any rate, for their own purposes—infer the upshot of a nebulous phrase from the general trend of the argument. And there I will leave these old printed editions of the Year Books to rest for the moment in peace.

I should like to mention here a fact which stands to the credit of the Honourable Society of the Inner Temple. The Society possesses a very fine manuscript, contemporary, or very nearly so, of the Year Books of 10-16 Edward III. Just a hundred years ago the Masters of the Bench commissioned Mr Serjeant Manning to make a translation into English of this manuscript and paid him very generously for doing so. This translation, now bound in a series of eight volumes, has never been printed, but is preserved in the Library of the Inner Temple. Both the original manuscript and Serjeant Manning's translation were kindly put by the Masters of the Bench at the service of Mr Pike when editing the Rolls Series of Year Books.

In July, 1800, just a hundred and twenty years ago, the Select Committee appointed to inquire into the state of the Public Records of Great Britain and Ireland

recommended that "the Series of the Year Books from Edward I to Henry VIII be completed by printing those hitherto unpublished...and also by reprinting the rest from more correct copies, as those which are in print are known to be in many instances incorrect and erroneous." The Committee made also some other excellent recommendations, but as nothing has ever come of them I will not go further into them now. But of their first recommendation something did eventually come, though not until after the lapse of two-thirds of a century. Some time before 1863 Mr A. J. Horwood was commissioned by the then Master of the Rolls to edit the unpublished Year Books of Edward I and afterwards to fill up, from original mss., the gap existing in the old editions between the tenth and seventeenth years of Edward III. Of the reign of Edward I Mr Horwood published five volumes, which included reports of the twentieth, the twenty-first, twenty-second, and on from the thirtieth to the thirty-fifth years inclusive. He left unfinished at the time of his death a volume which included the reports of the whole of the eleventh and the first three terms of the twelfth year of Edward III. His work was then taken up by Mr Luke Owen Pike, who completed, in successive volumes, the assigned task of filling up the gaps existing between the tenth and seventeenth years and between the eighteenth and twenty-first years of Edward III; and Mr Pike also re-edited and published the reports of the seventeenth and eighteenth years. A very few years after the publication of his last volume Mr Pike died, to the great loss of Year Book scholarship. Mr Horwood's work was far, very far, in advance of anything that had gone before; so far in advance of it that no comparison can possibly be made. In his volumes we got for the first

time a really scholarly edition of the Year Books which they dealt with. He produced a text in fully extended and no longer in abbreviated French, and he added a translation in English, a most obvious necessity, if the reports were ever to be of much use to those who were not more or less expert in understanding the original Anglo-Norman. Mr Pike's methods were an improvement even upon Mr Horwood's. He introduced the admirable innovation of supplementing and illustrating, wherever possible, the report in the Year Book by the corresponding record in the Plea Roll. As I have said before the report and the record are mutually interpretative of each other. Neither is complete without the other. It is difficult to imagine Year Books edited in more accurate and scholarly fashion than Mr Pike edited them; a fact which gives one the greater cause to regret that we have not more of his editing. This series of Year Books edited by Mr Horwood and Mr Pike is part of the official publication known as the Rolls Series¹.

Now I must say something about the work the Selden Society has done in this matter of editing and publishing the old Year Books, and first of all let me tell you what the Selden Society is. The Society was founded in 1887, very largely by the efforts of Maitland, to advance the knowledge and to encourage the study of the History of English Law. It is the only society aiming at and carrying out these ends. It is a purely private society. It has no government subvention. It has no funds at its disposal save the yearly subscriptions of its members, supplemented by grants of £50 from each of the Inns of Court and £10 from the Law Society. Though a purely

¹ The full title is "Chronicles and Memorials of Great Britain and Ireland during the Middle Ages."

private society, it has done and is doing work which goes far beyond any private or limited interests; work which scholars, regardless of place or country, could not and cannot possibly leave undone, if in any way it can be got done; nor could, nor can, it is to be hoped, Englishmen patiently contemplate being done by other than British or American editors. Of all the work the Society has done and is doing the editing and publication of the early English Year Books is the most important and is the most urgent. This was the especial task which Maitland, supremely conscious of its urgent necessity and importance, set himself during the last years of his life to do and to provide for getting done. He realized, as some others of us have through his teaching now also learned to realize, what a complete edition of our early Year Books, edited by competent scholars, would mean for general scholarship. Last week I quoted to you his statement—it will bear quoting again and again—that some day it will seem a wonderful thing that men once thought that they could write the history of mediaeval England without using the Year Books. Elsewhere he has written that “the first and indispensable preliminary to a better legal history than we have now is a new, a complete, a tolerable edition of the Year Books¹.” As the surviving Year Books of Edward I’s reign—there are not very many of them—and the hitherto unedited years of Edward III had been put into the safe hands of Mr Horwood and Mr Pike, the Selden Society determined to commence its work on the Year Books with a new and fair edition of those of the reign of Edward II. The text of the Vulgate edition is extremely corrupt. It is made from one single manuscript only, and there are several others known to us

¹ Pollock and Maitland, *History of English Law*, I, p. xxxv.

now, supplying many additional cases besides enabling us to correct the errors and corruptions in the one text which the old edition followed, or was supposed to follow, for, as I have told you, the transcriber and printers added with liberal hands to the already sufficiently manifold errors of their original. Maitland himself was the first editor. The first volume of the series was published in 1903, and was followed at intervals by three other volumes, also edited by Maitland. I need not say more about these volumes now than that they fully reached the standard of Maitland's best work, the standard of absolute excellence. But I must direct the attention of those who do not know them to the wonderfully luminous and informing Introductions to his first and third volumes. No words of praise can well be too high for them. In that to the first volume he put together what is nothing less than a complete grammar of the Anglo-Norman language of the earlier Year Books; and the French government paid him the great compliment of having this reprinted in a French translation for the use of schools and colleges in France. That learned and able scholar, Mr G. J. Turner, who had already assisted Maitland in his work on the Year Books, edited another volume. And since then the Selden Society has published some seven or eight other volumes of the series, about which I, at any rate, had better observe a discreet silence.

Since the completion by Mr Pike, some ten years ago, of the narrowly limited programme proposed by the Record Office, the Selden Society remains the only body which is doing anything towards giving the world a tolerable edition of the Year Books; nor does there at the present time seem the smallest probability of any other society or person or government department attempting

to do the like work. The Selden Society has, like all other publishing societies, suffered very grievously from the effects and results of the war. It costs now, I suppose, nearly three times as much in paper, binding and printing charges to produce a Selden Society volume of Year Books as it cost four or five years ago. To meet these extra charges the Society has already been compelled to sell out some of its small invested funds. From some source or other its income must be increased, largely increased, if, in the present conditions of money values and trade charges, it is to be able to continue its special work; work of high national importance, as I hope that I have made it abundantly plain to you that it is; work which one cannot without some feeling of shame contemplate being dropped through mere base lack of pence by those to whom these unique national treasures belong by right of heritage and descent, dropped by them only to be taken over—yes, certainly to be taken over, we are certain of it from what has happened before through our own shortcomings—certainly to be taken over and edited and published by appreciative foreign scholars. We must not, we cannot, let this come to pass with our own Year Books. Surely England and America—and these old books are America's heritage equally as ours—will wake up; surely they will see that the Year Books which are England's and America's unique possession, shall not be left to the editorship of any but English or American editors. Some three months or so ago the President of the Selden Society, Lord Sumner, issued a circular letter to the universities and other educational organizations of England and America, and to many private persons also, setting out the aims and past efforts of the Society together with its present position and needs. I am glad to

say that already one result of that letter has been the addition of many new members to the Society's roll. One generous benefactor has given the Society £1000 to form the nucleus of what is needed very badly, an endowment fund. Would that some half-dozen others were inspired to follow his example, and enable the fund to get past the nucleus stage. If the Selden Society is to go on doing the work which it has set itself to do on anything like the scale on which it has done it in the past, with anything like its former fulness, if, in fact, it is to do it at all, it must have from one source or another a much ampler support than it has hitherto received. It has never made any special appeal before, because what it had was, in the old conditions, sufficient for its needs. In the present conditions its income is not merely insufficient, but it will not support life.

Lecture III

So far I have given you a discursive account of the old Year Books, trying to make fairly plain to you what, speaking generally, they are; in what fashion they are written; when they were written; and I have made some suggestions as to their probable authorship. Of their actual contents I have as yet spoken in only very general and indefinite terms. I have said, indeed, that they contain innumerable matters of interest, legal, historical, constitutional, social, philological; interest of almost every kind; but I have not as yet put you into a position of being able to judge of this for yourselves by giving you any actual specimens of the multifarious contents of these old books; specimens, samples, from which you may form some opinion of the bulk. This afternoon I am going to try to do something of this kind. It is not a very easy task, with such a wealth of matter to choose from, to determine what best to choose that I may in a short time try to make you realize what treasure-mines of all sorts of knowledge these old books are; what potentialities of treasure trove they offer to those who set out to search them, equipped with just that knowledge which will, so to speak, enable them to recognize a precious stone when they turn it up; to distinguish it amongst the more or less worthless matter amongst which it is imbedded. These books were undoubtedly written primarily for the use and instruction of lawyers by lawyers. Law, therefore, shall have the precedence now in the particular instances I select. I shall not now say anything more of

the great fact, all important though it be, that it is upon the old Year Books that our common law is based. That has been recognized and admitted fully these many years past. Perhaps the most important addition to our knowledge of our own legal history which has been made of late years is the re-discovery of the very ancient process by bills in Eyre. That is an addition to our knowledge which we owe entirely to recent study of the manuscript Year Books. All knowledge of it had been lost for, I suppose, nearly six hundred years, because the Year Books of the General Eyres in which it is buried had never been printed, had never, I suppose, even been read in the original manuscript by anybody since shortly after the days when they were written. You may search from cover to cover every book on our law and procedure and upon the history of our law and procedure that has been printed more than seven or eight years, and not a word will you find in any of them about Bills in Eyre. I should need the full compass of a whole lecture to speak to you at all adequately about these intensely interesting bills. Time will allow me to say only just so much as may enable you to understand what they were; to grasp in some sort of fashion the importance of the re-discovery of the process; the intrinsic interest of the actual bills themselves. In the ordinary way the men of the middle age, speaking broadly, got justice in the Court of Common Bench, when they did not or could not for some reason or other get it in their own local courts. The procedure in that Court was not easily adaptable for the remedy of many wrongs which might be very real wrongs and yet could not be brought within any of the heads for which a man might get a writ. No Court which administers strict law, and strict law only, is so adaptable; and the


Court of Common Pleas administered strict law; and law strictly administered often involves hardship and morally inequitable results. Process in the Common Bench was slow, one may fairly suppose, somewhat expensive and was certainly often very dilatory. Further, the Court of Common Bench sat only at Westminster, a fact which put it still further out of the reach of the poor man living far away from London. Every few years our earlier Kings sent out a company of Justices to hold what were called General Eyres in every county of the kingdom. The King's Justices of Eyre had the powers, within their several jurisdictions, of the King himself. Again I am speaking generally; but they did represent the King in a very special and full sense. The King's residual or extraordinary function of causing justice to be done where ordinary means failed lay in their hands, and they were not only entitled but bound to exercise it. And they exercised it in this way. When they arrived at the county town in which they were to hold their Eyre they caused public proclamation to be made that anyone who desired to make complaint of and to have a remedy for any wrong of any sort done to him might present to them a bill stating all the facts, and they promised that justice should be done to him by them. These bills were presented to the Justices in large, in very large numbers. I found a large collection of them at the Public Record Office, where they are catalogued under the misleading and disguising title of Assize Rolls. They have nothing of the nature of rolls and have absolutely nothing to do with Assizes. The Justices inquired into the complaints in a very thorough-going way. They were bound by none of the shackles which bound them when trying a case commenced in the ordinary way by writ. They were ad-

ministering a sort of primaeval law, absolute equity; the sort of law one may suppose the Jewish Kings administered in the gate of Jerusalem. No rules stood in their way to prevent their finding out the exact truth of the matter. They did not concern themselves with finding out what, if any, particular law applied to the matter. They were there to see that right was done, no matter what the law said. They even interrogated the parties; a thing unknown to common law process. This equitable jurisdiction of the Justices in Eyre is earlier than the equitable jurisdiction exercised by the Chancellor or even by the King's Council. It is the very beginning of our English equity; yet all remembrance of it had been lost for nearly six hundred years. Within the last seven or eight years the Year Books have given us back a fairly complete knowledge of it; and have told us a great deal more about the origin of equity in England than has been known for the last five hundred years. I wish that I had time to dwell longer upon this matter of extreme importance to all interested in the history of English law, and to lay before you a few of the actual bills, full, as many of them are, with quaint details throwing a fuller light than anything else I know upon the social conditions prevalent in England in the thirteenth and fourteenth centuries. Yet just one of these bills I must and will lay before you. A word by way of introduction to this particular bill. In the middle age there were no old age pensions, and there were no offices to which a man could go and buy an annuity. The only thing that anyone could do who wanted to make provision for his old age, for the time when he could no longer support himself by his daily toil, was to enter into a contract with somebody else that for the rest of his life he should be provided with

board and lodging in consideration of a money payment then and there made to him. In the year 1291 John Feyrewyn presented the bill of complaint which I am going to read to you, to Sir John Berewick, the Justice presiding over the Eyre of Shropshire held in that year. It is written in most illiterate French. I will try to translate it for you into English, though I am conscious that I can make no really adequate translation. The pathos of its illiteracy is untranslatable. "Dear Sir, I cry mercy of you who are put in the place of our lord the King to do right to poor and to rich. I John Feyrewyn make my complaint to God and to you, Sir Justice, that Richard the carpenter that is a clerk of the bailiff of Shrewsbury detaineth from me six marks which I paid him upon receiving from him an undertaking in writing wherein he bound himself to find me in board and lodging in return for the money he had from me; and he keepeth not what was agreed between us, but as soon as he had gotten hold of the money he abandoned me and constrained my person and gave me a scrap of bread as though I had been but a pauper begging my bread for God's sake, and I was nigh dying of hunger through him. And for all this I cry you mercy, dear Sir, and pray for God's sake that you will see that I get my money back before you leave this town, or else never shall I have it back again, for I tell you that the rich folk all back each other up to keep the poor folk in this town from getting their rights. As soon, my lord, as I get my money I will go to the Holy Land, and there I will pray for the King of England and for you especially, Sir John of Berewick; for I tell you that I have not a half-penny to spend on a pleader; and so for this, dear Sir, be gracious unto me that I may get my money back." This bill bears an

endorsement that Richard the carpenter acknowledged the truth of John's allegations, and that the two of them came to terms sanctioned by the Court; so we may suppose that John recovered at any rate a substantial part of his money from Richard the carpenter that was the bailiff's clerk; and if he afterwards succeeded in getting to the Holy Land I hope that he did not forget his promises to Sir John Berewick. If any of you would like to know more of these Bills in Eyre, of their interest and importance, of their actual contents, I may refer you to the Introduction to the second volume of *The Eyre of Kent*, published by the Selden Society, to *Select Bills in Eyre*, published by the same Society, and to the paper on *The Transformation of Equity* read by Sir Frederick Pollock before the International Congress of Historical Studies held in London in 1913, and printed in the volume of *Essays in Legal History* read before that Congress.

Take now another matter on which we have gathered from a study of the Year Books some new information as to the effect of one of the best known of our mediaeval statutes, the statute known as the statute *de donis condicionalibus*, the statute touching conditional grants of land. Land was frequently granted to a man and the heirs of his body, with the attached condition that if he died without leaving an heir of his body the land was to go back to the grantor or to his heir. Before this statute was enacted land so granted was alienable on the birth of an heir to the grantee. This, obviously, was not in accordance with the wishes or intention of the donor. It was also something in the nature of a fraud upon him, for the donee's heir might die before his father, in which case the land should have reverted to the donor, which, of course it did not if alienated by the donee upon the



birth of an heir. The object of the statute was to remedy this very obvious inequity; and the statute *de donis*, enacted in 13 Edward I, has been held for centuries past by all lawyers and historians to have certainly restrained the alienation of lands so conditionally granted, until the highly ingenious method of what was known as a feigned recovery, invented many years later, made waste paper of it. The subject is too technical a one for full discussion here but it seems quite clear from the report of a case heard in the Court of Common Bench in 5 Edward II that the doctrine so universally held and taught for centuries past, right down to the present time, is incorrect. The statute restrained only the actual grantee from alienating. It did not restrain his heir from doing so. This was Chief Justice Bereford's ruling as to the words of the statute as they actually stand, and a careful examination of them in the light of the Chief Justice's remarks makes it plain that this is their effect. But then the Chief Justice went on to assert that he that drafted the statute meant to bind the issue in fee tail as well as the feoffee or actual grantee until the tail had reached the fourth degree—that is, until the great-grandson of the original donee had succeeded—and no further; and it was only through negligence that he omitted to insert express words in the statute to that effect. And then he immediately went on to read these missing words into the statute and gave effect to them in his judgment. And he gave the same ruling and judgment when the same point was afterwards raised before him. And apparently no one at any time protested. Of course we cannot imagine a judge of to-day doing anything of the kind. I have never been able to find anything which throws any light upon, or at all confirms, Chief Justice

Bereford's assertion that the words which he read into the statute ought actually to have been there, were intended to be there, and were not there only by reason of the draftsman's carelessness. But this was not the only time when Bereford declared that a statute did not contain all that it ought to contain, and construed it according to his own theory of what it should have said. The powers of a mediaeval Justice in interpreting the law, whether statute law or common law, seem to have been recognized as plenary. Some of them went to an extent which appears to have shocked even Bereford himself. Here is a story which I give you on Bereford's own authority. I take it from an unprinted Year Book. A jury had acquitted a man charged with felony, evidently to the dissatisfaction of the Justices, Scrope and Spigurnel, before whom he had been tried. "Since the jury have acquitted you, we acquit you," Scrope said grudgingly, "get you gone." And Spigurnel, the other Justice, said that upon the evidence the man ought to have been hanged. Then Bereford happened to come into Court, and the facts were stated to him. No expression of his opinion is reported, but you may draw your own inferences from the story he proceeded to tell his brother Justices and the whole Court of how a man, or, more probably, a lad, was hanged in circumstances which he, the Chief Justice, certainly considered afforded no legal warrant for his execution. He was sitting, he said, with another Justice at a Gaol Delivery. "A master had a servant, and the servant was punished by him, and when the master was asleep in bed, the servant, planning to carry off his master's goods, came to his bedside at night with the intention of cutting his throat. The master was lying sound asleep with his back towards the servant, who

gave him a deep wound in his back, believing that he had cut his throat. The servant then ran away. The master was quickly awakened by the copious bleeding from his neck, and recognized that he had been wounded. He alarmed his neighbours, who got up and arrested the servant. He was charged before me, but I refused to let the matter go before a jury because the master was alive, and the servant was remanded to prison. And afterwards, by St Mary! he was arraigned before my companion and was hanged on the ground that in the circumstances the will must be taken for the deed." Bereford was a great teller of stories with a point in them. Many times we find him telling a tale to make plain and drive home some principle of law. I will give you one of these stories which has a special interest in that it reproduces for us with considerable dramatic force a scene in Parliament in Edward I's time. The Chief Justice was insisting upon the necessity of a writ making it quite plain what charge a defendant was called upon to answer. It must not be couched in such nebulous phrases as left the defendant in doubt as to what he would be actually charged with, what particular charges he would have to answer, when he came into Court. This is Bereford's story. "In the time of King Edward that is dead"—he was speaking early in Edward II's reign—"a writ issued out of the Chancery to the Sheriff of Northumberland to summon Isabel, Countess of Aumale, to appear at the next Parliament to answer the King, and the writ ran that 'she was to answer such charges as should be brought against her.' The lady came to the Parliament, and the King himself sat in the Parliament. And afterwards she was arraigned by a Justice on thirty definite charges. The lady, by her Serjeant, asked judgment of the writ,

since it made no definite charge, and she was now called upon to answer divers definite charges. There were two Justices present who wanted to rule the writ a good one. But Sir Ralph of Hengham said to one of these Justices, 'Would you give judgment here after the manner that you did at the gaol-delivery at C., when the receiver was hanged and the principal was afterwards acquitted before yourself?' And then he said to the other Justice: 'When you were sitting at N. you caused one who had been outlawed on a matter of accounts to be hanged. Those judgments were not in accordance with the common law.' And afterwards Sir Ralph said that the law willeth not that any should be taken by surprise in the King's Court, 'but you would have the lady called upon to answer in Court of other matters than those she had notice of in the writ. She must have notice in the writ of the articles on which she will be arraigned, and that is the law of the land.' And then the King, who was passing wise, rose and said: 'Naught wot I of your quibbling, but by God's blood you shall give me a good writ before you get you up from hence.' " Here is another of the Chief Justice's stories, possibly invented at the moment. A plaintiff was seeking to recover some land, of which it appeared that an ancestor of the defendant had illegally obtained possession. All that the defendant could plead was that the land had been in the possession of his ancestors for some time, and that he had succeeded to it in the ordinary course of descent. This was a defence which did not commend itself to Sir William Bereford. "If you have continued the wrongful estate of your ancestors you have done all the more wrong." And then he went on to tell this story. Once upon a time a man lay sick abed, and so weak was he that he swooned, and

lay in a trance, and it seemed to him that he came unto a certain place and there saw three pairs of gallows, each one higher than the last, and on the shortest hung his grandfather and on the middle one his father; and he asked wherefore this was so; and one answered him and said that his grandfather did a disseisin, and for this trespass was hanged, and after him for continuance in the wrong his son was hanged higher, and the third and highest pair of gallows was for his own proper use when he should be dead because of the yet longer continuance in the wrong. So do not trust too much to what you say about your doing no wrong in continuing the estate of your ancestors; for if their estate be wrongful, so is your own. And here I must leave Chief Justice Bereford and his stories and go on to something else.

Chapter 39 of *Magna Carta* says, to put it very shortly, that no free man shall be convicted unless by the lawful judgment of his peers—*per legale iudicium parium suorum*. Long usage has divided the community for the purposes of this chapter into two classes, peers of the realm and persons not of that degree. Lord Coke gives this contracted meaning to the word. But that this was far from what the word meant to lawyers in the thirteenth and early fourteenth centuries, is made plain by a very interesting case tried, probably, in 1302; a case which certainly ought to be considered in every treatise or dissertation on *Magna Carta*, but is mentioned in none of them, because, I suppose, the writers had not thought it worth their while to study the old Year Books. Sir Hugh—there is no fuller description given of him—was charged with the commission of a criminal offence. There were twelve men, ready to pass their judgment upon him in due course, and the Justice asked Sir Hugh if he agreed

to them. "I am a knight," Sir Hugh replied, "and I ought not to be tried except by my peers." "Because you are a knight," the Justice replied, "we will that you be judged by your peers," and a jury of knights was formed, subject to Sir Hugh's challenges; and this jury acquitted Sir Hugh. Now what I want you to note is that there was no argument, no discussion by the Court, as to the meaning of *judicium parium*, judgment by peers. As soon as Sir Hugh said that he was a knight and claimed to be judged by a jury of knights, his claim was immediately allowed. It was held to be a matter of course, something that no one could contest, that a knight should be judged by a jury of knights. This is a most important case in its bearing on the real meaning of *judicium parium*; and you will not find the smallest allusion to it in any treatise on *Magna Carta* that has yet been written. There are several other points of interest in Sir Hugh's case, but I am afraid that I have not time to go into them to-day.

This mention of *judicium parium* reminds me of another interesting point in connexion with it upon which the Year Books are illuminating. In later times the commonly received opinion has been and is that a spiritual lord, a Bishop with a seat in the House of Lords, is not, as such, a peer of the realm. This, it would seem, is contrary to the older doctrine. In the Trinity term of 13 Edward III, a question arose in a case in the Common Bench as to the sufficiency of a jury, it being alleged that when a peer of the realm (*pere de la terre*) was a party to a civil action it was his privilege that there should be a special jury, consisting partly of knights. The point was contested, but the privilege was affirmed by the Justices. In this particular case, however, which is the point of importance, it was a Bishop on whose behalf the privilege

was claimed as being a peer of the realm. No one suggested that a Bishop was not a peer of the realm. By the counsel on both sides and by the Justices themselves it was clearly admitted as a fact about which there could be no dispute that the Bishop was a peer of the realm. Again, to give you another instance, in the Easter term of the same year it was stated by counsel that the Abbot of Ramsey, a mitred Abbot sitting in Parliament, was a peer of the realm, and no one attempted to suggest or to argue that the Abbot was not a peer of the realm.

This mention of juries suggests to me that I may say something here, very shortly, about the uncomfortable position in which the mediaeval juror occasionally, or, I dare say, very often, found himself. There is a note in one of the unprinted Year Books of Edward II that a juror was sent to prison merely because he would not agree with the eleven others. In another case when a jury could not agree, the presiding Justice, Hervey of Stanton, thus addressed them: "Good people, you cannot agree?" Then turning to John Allen, the Marshal of the Court, he said: "Go and put them in a house until Monday, and let them not eat or drink." On that commandment, the old Year Book goes on to say, John put them in a house without food or drink. At length on the same day about vesper time they agreed, and John went to Sir Hervey and told him that they were agreed. Then Sir Hervey gave them leave to eat.

In a case tried in the nineteenth year of Edward III it is reported that the jury could not agree. The Court got tired of waiting and went home to dine. I do not know where the Justices lived, but somewhere fairly east of Westminster Hall, I should suppose, for when they were told that the jurors were at last in agreement these were

brought to St Clement's Church, and there Justice Thorpe took their verdict. Afterwards the objection was raised by Serjeant Pole that the verdict could not be acted upon because it had been taken out of Court and not at a proper time. "We can take a verdict by candle-light," said Chief Justice Scot, "if the jury will not agree; and if the Court were to move we could take the jurors about with us in carts, and the Justices of Assize do so." They would make a pretty picture for a historical painter on the look out for an original subject, these wretched jurors being dragged about in mediaeval carts from assize town to assize town. I am going to tell you something now of what used to be called abjuration of the realm, an interesting mediaeval custom of which we get several notices in the Year Books of the Eyres. If a man were guilty of any crime except high treason and could escape arrest for the moment and get himself inside a church, he was safe, at any rate for a time. This was called taking sanctuary. Let us follow the fortunes of a mediaeval criminal who commits a murder, say, and then, before he can be arrested, succeeds in getting inside a church. As soon as knowledge of the crime and of the presence of the criminal in the church comes to the public ear, it is the duty of the inhabitants of the four nearest villis or centres of population to set a guard about the church to make sure that the criminal does not escape, and then to send for a coroner. When the coroner arrives he begins to discuss matters with the refugee; that is all he can do. No one may dare to arrest him or drag him out of the protection of the Holy Church. He had the right to remain in sanctuary and of having food taken to him there for forty days; a right which no one would have thought of violating, and if anyone had done so the nearest Bishop would have

promptly excommunicated him, and the bravest man in the middle age shrank before the threat of excommunication and all it entailed even in this life. At the end of the forty days the refugee might, if he liked, still remain in the church, but all supply of food was cut off. The refugee, of course, knew all this, and he knew that he must accept the usual terms as propounded to him by the coroner; and these terms were that he must swear to depart from the realm, never to return to it. He must embark from the particular port assigned to him by the coroner, and he must make all possible speed in getting there, but he must never leave the highway. If he deviates from it then his life is at once forfeit and any man may slay him. There was not much allowed to him in the matter of clothes. "He that abjureth the realm," says a note in one of the early Year Books, "shall keep his jacket (*tunicam*), shirt and breeches; and whatever else he hath shall be confiscate"; but it was ordered that he should carry a cross in his hand. I will now read you the oath which these refugees took in the presence of the coroner. It is interesting and sets out what the refugee undertakes to do. "This hear thou, Sir Coroner, that I, M. of H., am a robber of sheep, or a murderer of one or more persons, and a felon of our lord the King of England; and, because I have done many such evils or robberies in this land, I do abjure the land of our lord Edward, King of England, and I swear that I will haste me towards the port of such a place which thou hast given me, and will not go out of the highway, and if I do I will that I be taken as a robber and a felon of our lord the King; and that at such a place I will diligently seek for passage, and that I will tarry there but one flood and ebb if I can have passage, and unless I can have it

within such a space I will go every day into the sea up to my knees assaying to pass over, and unless I can do this within forty days I will put myself again into the Church as a robber and felon of our lord the King. So God me help and His Holy Judgment¹." Now, what did these men really do when they reached the port assigned to them? The oath they took tells us plainly what they ought to have done—to get themselves across the seas within forty days, or, failing this, to put themselves into the sanctuary of the church again as robbers and felons; and, then, I suppose, go through the whole process over again. This latter course, so far as can be gathered from our records, they did not take. It seems difficult to believe that any but an exceptional few could find means of transport. They had no money and could not buy a passage. They could not all work their passage across, and least of all the women. What became of them? Let me conclude these remarks on abjuration with the story of John the son of William of Westfield. I do not know that there is anything exceptional about it, but it will bring home to you how dangerous a thing it was for an abjurator to break his oath. In the fourth year of King Edward I, on April 20, 1276, John was arrested and put into prison in Houghton in Bedfordshire on suspicion of larceny. He escaped from the prison and fled into the parish church. A few days afterwards he abjured the King's realm with the customary formalities. The port of Dover was assigned to him, and for that port he set out when he left the church. But, the old record tells us, "he fled from the highway and was followed by William of Houghton and on the hue and pursuit of the whole township he was beheaded by the township of Houghton²."

¹ See *The Statutes of the Realm*, I, p. 250.

² See *Select Coroners' Rolls* (Selden Society), p. 37.

There was a curious institution in the monasteries of mediaeval England known as a corrody. A corrody was the enjoyment of board, lodging, clothing and all necessaries¹ in a religious house. It was granted on the appointment of one who had the right of nomination. It was sometimes, perhaps, attached to a particular office as part of the holder's wages. The King was entitled to nominate to a corrody in every religious house of royal foundation, except where the house held its land in frankalmoigne or free alms. When the house was a nunnery there was a corrody certainly for a female. Whether or not the King could have made the nuns take in a man as a boarder I will not say certainly, not being under any compulsion to do so. This is what old Fitzherbert has to say on the point; written, probably, with a smile on his lips. "Where the King is founder of any abbey or priory of nuns, the King shall have a corrody for the Queen's maidens or others of her cousins for whom he pleaseth to write; but if the King will write unto an abbey of monks for a maiden to have a corrody there for her sustenance it seems the same shall not be obeyed, for the ~~incon~~venience thereof; nor contrary if he write to a nunnery for his vadelect¹ to have a corrody there—*tamen quaere*"; "yet," one hears him adding under his breath, "I am not quite sure." These grants of corrodies were made in specific terms. They did not leave it to the monastery to give the beneficiary just what it chose to give him or even to set him down to just the daily fare of the brothers of the house, whatever it might happen to be. And this fact constitutes the special interest to us to-day of these mediaeval corrodies; for from them we learn what was considered a reasonable provision of board and lodging for different classes of the people in the

¹ *I.e.* a young man of good birth in his personal service.

thirteenth and fourteenth centuries. These corrodies, I may add, were usual and useful means for providing pensions for the King's servants without any expense to himself or to the Exchequer. The King had the right of nomination to a corrody in the Priory of Merton. Edward III in the early part of his reign granted this corrody to an officer of the Royal Wardrobe. We may reasonably suppose that this officer was an esquire, a man of some fairly high social position. What, in the thirteenth year of Edward III, was considered a reasonable provision for such a man? We have it all set out very fully in the King's grant of the corrody. This particular pensioner was to have a suitable chamber (*camera*) in the priory. He was to have stabling for three horses; six loaves of one kind of bread and three loaves of another kind daily throughout the year; with six gallons (*lagenas*) of ale and two monastery dishes (*fercula*) of pottage (*potagium*). On every flesh day there were to be two monastery dishes of meat, and on every fish day two monastery dishes of fish, apparently for the mid-day meal. On every flesh day there were to be also two monastery dishes of meat for the evening meal, and on every fish day, unless the pensioner happened to be fasting, two monastery dishes of fish. Six wax candles were to be provided every day by the priory for the pensioner's chamber. He was to be allowed in addition to all this a basket or bushel (*busellum*) of oats daily and twelve loads of hay yearly for his two horses. Further, he was to have six loads of straw every year for his chamber—and this fact throws a strong light upon what we to-day should consider the rough and uncomfortable surroundings in which a man of good social position lived in the middle age. He was also to be allowed twelve loads of wood

(*busca*) for fuel; and every year he was to be provided with one robe—that is what to-day we should call a suit of clothes—of the kind and quality worn by the Prior's esquires, for himself, and another, such as was worn by the Prior's servants, for his own servant. And in addition to all this he was to be allowed twenty shillings a year for shoes and other necessities. That is a very instructive and interesting statement and shows us clearly what in the middle age was the standard of living of a man of good social position.

Now let us see what these old Year Books can tell us as to what was, I suppose, considered the smallest provision upon which a poor man could live decently. Certain lands had been given to the Abbot of Creak in Norfolk, and, by way of consideration for them, he had contracted for himself and his successors in office, amongst other things, to support five poor persons in a certain place. He was to find every day a loaf of the weight of fifty *solidi*, which, I suppose, would be the equivalent of some thirty ounces, nearly two pounds, according to our modern computation, together with pottage and ale, and also a dish of meat or fish, according to the day, between two of them, and half a dish to the fifth. Each of these poor men was to have also a cloth tunic suitable to his condition every other year.

Then, lastly, what was considered a reasonable provision of food for one who was of an intermediate class, for the Beadle of the Honour of Westminster and Middlesex, who, I suppose, was an official of some importance in his time? The terms of his corrody were that he was to receive every day in the Abbey of Westminster a loaf of white bread and a loaf of bread of another quality (*un bys pain*), and a gallon (*une galone*) and a half of ale;

and two messes of flesh every flesh day and two messes of fish every fish day. On the whole, one is inclined to think that it was no bad thing to have a corrody within a wealthy Abbey or Priory.

The amount of ale to which the five poor men were entitled is not specifically stated, but I do not suppose that the allowance was an ungenerous one. The Beadle had a gallon and a half a day, and the Esquire had six gallons, though probably this included his servant's allowance also. The amount of beer drunk in mediaeval England seems to have been enormous, judged by modern standards. Englishmen, indeed, appear to have been noted throughout the mediaeval world from very early days as mighty beer-drinkers. Even so far back as the first half of the thirteenth century Pope Innocent IV held this national weakness for ale responsible for a certain want of clearness of grasp of the principles of ecclesiastical law in our English masters and professors. There was a dispute as to certain matters between the Abbot of Evesham and the Bishop of Worcester which was adjourned to Rome for determination by the Pope. In the course of his argument, Robert Clipstone, who was of counsel for the Bishop, thus addressed the Pope: "Holy Father," said he, "we have learnt in our schools, and such is the opinion of our masters, that prescription runneth not against episcopal rights." "Of a surety, then," replied the Pope, "both you and your masters must have drunk deeply of English ale when you learnt that."

The Year Books are not exactly books to which we should naturally turn to in search of horticultural information; but there is much knowledge to be gleaned from them about the trees, fruit trees and forest trees,

grown in England in the middle age, and their money value. Sometimes we get something more than this. In an action of waste heard in 14 Edward III it was alleged that waste had been committed by the destruction of four apple trees and one whitethorn in a garden. It was pleaded, amongst other things, on behalf of the defendant that whitethorn was underwood and could not, consequently, be the subject of waste in a garden. To this it was replied that whitethorn is a tree upon which a graft can be made. It is not generally known that fruit was cultivated with such art and skill in the first half of the fourteenth century, and I think that the fact is worth bringing to your knowledge.

I am going to take you a long way back now for my next anecdote from the old Year Books. In 1293 one Thomas Corbet was in possession of eight acres of land—he had other land besides these eight acres—in King's Bromley in the Forest of Cannock in Staffordshire. Somebody brought an action against Thomas to get this land from him on the ground that he had no legal title to it; but Thomas brought convincing evidence before the jury of the fact that King Henry II was once upon a time provided with dinner on that spot by his, Thomas's, ancestor, who entertained him in such a hospitable manner that the King gave him eight acres of land. And from this you learn incidentally why King's Bromley was so named, because it was Bromley within the King's manor, so distinguishing it from Abbots Bromley, which was the manor of the Abbots of Blithbury, and from some other Bromleys in Staffordshire.

Let me now conclude these tales from the Year Books with a string of short stories: a series of pictures of certain phases of English life in the thirteenth and fourteenth

centuries. Cutting out the tongues of those who had been injured in person or property, to prevent their giving information against those who had so injured them, was so common that a special statute (5 Hen. IV, c. 5) was in 1403 directed against the practice. I translate the following directly from the Roll of the Kent Eyre of 1313. "John of the Mill that lived opposite St Lawrence's gate in Canterbury, together with other malefactors whose names be unknown, came to Ellis Honeywood's house in Littlebourne and broke into the said house and wounded the said Ellis and Christina his wife, and cut out their tongues. And they put the said Ellis upon a brazier wherein was fire burning. And one Philip Hole they slew in the same place, and straight-way fled."

This again comes straight from the Eyre Roll. "Richard of Rye that was ten years old begged for his livelihood through the countryside. He died from weakness and exhaustion, and the jury brought it in misadventure." This is by no means an exceptional case. It seems to have been not uncommon for little fellows of ten years old, and even of some years less, to be tramping the country, homeless and friendless, picking up a living as best they could.

B | Here is another story—one you can easily picture to yourselves. "John Whityng and Alice of Strood had boiled some water in the house of John Saul in the borough of Wyke and they poured it into a certain large bowl. And then they began to sport with each other, and in embracing the one the other with their arms they fell into the said water and were both so badly scalded that on the next night following they died." | NB

This next story must be my last one. "Giles the

shepherd, being minded to kill a certain pig of his, was boiling water in a certain earthen vessel that therewith he might scald the carcase of the said pig. But this same pig ran against the said vessel that was full of hot water and overturned it, so that both vessel and boiling water fell upon Richard that was the son of the said Giles and was of the age of seven years, and so severely scalded him that on the third day thereafter he died." Not long afterwards this same Giles the Shepherd was killed in a quarrel. These obscure people lived their common-place lives and died their tragic deaths in the England of more than six hundred years ago. And to-day I am telling their stories, after all these centuries of oblivion, in the University of London.

Lastly I want to revive and recall to general knowledge some interesting proverbs and proverbial sayings scattered about the Year Books which, current once, had gone out of use and become forgotten before Howell and Ray thought of making their collections of such things. They are worth recovering now. In a case tried before Chief Justice Metingham in the fifteenth year of Edward I's reign, the paternity of a party to the action was contested. Though it was admitted that he was born within wedlock it was alleged that his father was not his mother's husband. But the Chief Justice refused to entertain any such objection. "Hwo so boleyth myn kyn," he said, "ewere is the calf myn¹." The rhymes of this jingle bespeak the proverb.

Serjeant Mutford, afterwards a Justice of the Common Bench, seeing that his opponent in an action tried in Edward II's reign was growing hot and angry, said: "I learned this verse from a master I once had—*Lex*

¹ *I.e.* Whoso bulleth my cow, the calf is always mine.

vidit iratum, iratus non vidit illam. Selde grendeth well the lothe and selde pledeth well the wrothe¹." Here we have, seemingly, a couple of mediaeval proverbs, one in Latin and the other in the vernacular, which have entirely disappeared from modern speech and literature.

There seems to have been a mediaeval proverb in common use, for we find it occurring several times in the Year Books, carrying much the same meaning as our present day saying that you cannot eat your cake and have it. A man, for example, had let certain land at a certain rent. Afterwards he regained possession of a parcel of the land and yet wanted the tenant of the outstanding parcel to pay him the full rent for which the whole of the land had been let. "He wants," said Bereford, C.J., "to have the eggs and the halfpenny as well." A variant of this is "the chicken and the half-penny."

In a case where a very young widow, said to have been only eight years of age at the time of her husband's death, was seeking to get dower assigned to her, the counsel on the other side took the preliminary objection that she was too young and not sufficiently developed physically to have been able to fulfil the conditions necessary for the acquirement of a right to dower. He asked the Court to see the claimant, and then, if after seeing her they should yet be of opinion that she was capable of having become entitled to dower, he would take a further objection. "No," said Bereford, the Chief Justice, "if at this point we were to award that she was able, that would be for wine and candle"; meaning, I suppose, that such an award would finally dispose of the case in the

¹ *I.e.* Seldom grindeth well the loath, and seldom pleadeth well the wrath. Additional MS. (British Museum), 35116, f. 24 d.

claimant's favour, and that no further plea against her would be allowed. Wine and candle are the end of the day's work. In Devonshire, I understand, people still say "that's supper beer and bed," meaning thereby "that's all over" or "there's an end of it."

The heir of a vendor of land was called upon to warrant the purchaser's title, which had been questioned. He was willing to do so after a limited fashion, but not absolutely and unconditionally unless the Court should formally rule that he must. "If you let it come to a decision," Bereford said to him, "by the faith that I owe you, you will have to warrant with the sauce," that is, with the very fullest consequences, adverse to yourself, that such a formal decision could carry. Other instances of this phrase, used in the same sense, occur in these old reports.

Two brothers had fallen out with each other and the consequence was an action in the Common Bench. The Court seems to have made up its mind before the matter had gone very far on which side right lay, and gave him that was in the wrong a strong hint that he had better come to a settlement with his brother before the next morning, lest a worse thing should befall him; "and so," the reporter tells us, "they made agreement with each other, and Pilate and Herod became friends"—*et facti sunt amici Pilatus et Herodes*. Have we here the suggestion of some old and forgotten proverb? Another old proverb I have come across is "Once forsworn always forlorn." The old meaning of "forlorn" was "morally lost." The *Old English Chronicle* (1154) speaks of the lawless barons of King Stephen's time as "forcursed and forsworn and forlorn."

One of the most cryptic utterances reported in the

Year Books is attributed to Bereford in the reports of the Michaelmas Term of the eleventh year of Edward II. It possibly and probably embodies some old proverb obsolete long ago. The plaintiff in an action in the Court of Common Pleas asserted his right to pasture his cattle in a certain place. Counsel for the defendant said that such a claim must be proved in one of two ways; and he asked the plaintiff whether he proposed to prove it in this way or in that. The plaintiff's counsel objected to being forced to answer either of the alternative questions put to him on behalf of the defendant; and he asked for the ruling of the Court on the point. The Chief Justice gave that ruling. He is reported as saying, and saying in English, be it noted, and not in the customary Anglo-Norman of the Courts, "Bothe thei schellen out of this house benedicite and dominus"; and the reporter tells us that by this form of words he intimated that the plaintiff need not answer either of the questions put by the other side. "Both *Benedicite* and *Dominus* shall go out of this house." It is hard to understand how these words carry the meaning which the contemporary reporter tells us that they did carry, or, indeed, any other meaning; but one cannot question the reporter's interpretation. And, because the reporter has told us what the Chief Justice meant, it must not be thought that there was anything occult in the words used by him or that their import was not obvious to everyone who heard them, for unless a Judge made a perfectly straightforward assertion the mediaeval reporters always thought it necessary to put the most obvious inference beyond all doubt by a *quasi diceret*. The Chief Justice's remark was probably either a common proverb of itself or was founded upon some common proverb, and this is made

the more likely by the fact that he spoke in the vernacular. The old black letter edition¹, that "hopeless mass of corruption that passes as a text of the Year Books"—as Maitland called it—makes absolute nonsense of the whole sentence by turning the "bothe thei" of the original manuscript into "boche per."

I have left myself but scant time to say something which I want to say, which, indeed, I think it is my duty to say, seeing that the opportunity has been given to me of saying it in this place. A fortnight ago I said that to the University of London belonged the credit of being the first of our Universities or of our educational organizations of any sort officially to recognize the existence of the Year Books, of the paramount importance of which to scholarship of many sorts I have tried to convince you. Now that a real beginning has been made by the University of London, I do hope and trust that the matter will not be allowed to die out again entirely; that these lectures which I have been allowed to give here will not remain a mere flash in the pan, without effect or result. The critical study of the Year Books, like most other scientific research work, is not a lucrative pursuit. There is no money to be made by it. No one could live on editing Year Books, edited he them never so well and lived he never so narrowly. And yet I hope that no one who knows even no more about them than I have been able to tell you in the course of these three lectures would be inclined to say that they should remain for ever unedited, unpublished and quite inaccessible to all but a few experts, and even to them accessible only with much difficulty. If Year Book study and scholarship is to continue in England and is not to be left to Germany

¹ Mich. 11 Edw. II, p. 327.

—which has already edited for us our own ancient Anglo-Saxon laws—or to some other land that is not ours, it must be endowed in some shape or form. There must be some inducement to a competent man to give up his life to it; an assurance that he will at any rate be able to live. Someone has got to enforce home truths; and if perchance I am not the right man to do it, then one greater than I shall do it for me. “As matters now stand,” Maitland said, in an address he delivered at Cambridge some twenty years ago¹, “an endowed office is almost the only reward that can attract a man from the beaten and lucrative paths of practice and induce him to write about law something that will not be of direct use to legal practitioners. I have spoken of professorships and readerships and the like as rewards and I am now going to say something that will sound to you extremely selfish, but as it seems to me to be true I will say it all the same. I think that as matters now stand in England there would be a great need of professorships as prizes even if the professor when appointed generally fell at once into his dotage. To take by way of example a matter in which just at present I am much interested. How am I as Literary Director of the Selden Society to induce young men to learn enough about the law of the fourteenth century to enable them to edit Year Books? I live in terror lest the Savigny Stift or the École des Chartes should undertake an edition.” Thus Maitland. I will end with a very few words of my own. The outlook is perhaps even less promising than it was when Maitland said what I have just quoted to you. There is as yet no answer forthcoming to his question; and because there is not our young men will not qualify themselves to edit

¹ On “Law at the Universities.” *Collected Papers*, III, p. 424.

Year Books. They think that it is not worth their while. One last word, which is an urgent word. With Year Book scholarship time is pressing. The lighted torch is now in very few hands. Are we going to do anything, is anybody going to do anything, to ensure that when perforce it falls from those few hands there shall be men properly qualified to take it up and carry it on before it dies out? It may be easier to keep it alight than to relight it.

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